

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**December 10, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Lalwani and Sandhu  
Absent: None  
Staff: Fujimoto, Heyden, Lindsay, Reliford and Rodriguez

**III.  
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
November 12, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of November 12, 2003.

There were no changes from staff.

**Motion** to approve the minutes as submitted.

M/S: Williams/Giordano

AYES: 6

NOES: 0

**V.  
ANNOUNCEMENTS**

**James Lindsay, Acting Planning Manager**, announced that as of last night's Planning Commission interviews, the two new Commissioners are Al Garcia (Community Advisory Commission Chair) and Zeya Mohsin (member of the Parks, Recreation, and Cultural Resources Commission). He noted that the January 14, 2004 meeting will be their first meeting, and staff will hold a training session beforehand. He also noted that since this is Vice Chair Williams last meeting, Commissioner Lalwani will be stepping up as a regular member of the Subcommittee meeting along with Chair Nitafan, and Commissioner Galang will be the alternate.

**Vice Chair Williams** expressed how grateful he is to the community for allowing him to serve on the Commission and explained how planning has been a very exciting, challenging and rewarding experience to see projects being fulfilled. He felt blessed and honored for what he has gained for serving on the Commission and gave recognition to mentors such as Bill rush and Ed Unger. He noted that he always sat at the end of the dais because of respect to Ed Unger and is sorry to hear that he is ill and sends him his best wishes that he feels better.

Vice Chair Williams also announced that he was called by some high level folks in the GOP to run for the 20<sup>th</sup> assembly district and has accepted. He leaves the City with sadness, and also warmth and appreciation, and thanks each and everyone for making him a better person and wishes everyone much success

Vice Chair Williams abstained from voting on Agenda Item No. 2 (Use Permit No. P-UP2003-45) since his business is in close proximity to the property and asked to be excused from Agenda Item No. 10 (Status Review of Housing Element Implementation Policies) and Agenda Item No. 11 (Personal Rapid Transit Presentation) since no action is required. The Commission agreed.

**Commissioner Galang** abstained from voting on Agenda Item No. 1 (S-Zone Approval (P-SZ2003-10), Use Permit No. P-UP2003-34, Variance No. P-VA2003-3 and EIA No. P-EA2003-10) since his business is in close proximity to the property and requested that Agenda Item No. 1 be the last discussion item. Chair Nitafan disagreed since Vice Chair Williams has asked to leave first.

Commissioner Galang wished everyone a Happy New Year and advised to spend wisely and not to leave children unattended.

**Commissioner Giordano** commented that Vice Chair Williams will be missed and that she enjoyed working with him. She liked what he said about Ed Unger and recalled that Paul Hay expressed the same words and noted that she will pass those words along to Ed Unger.

In regards to the Planning Commission packet, Commissioner Giordano noted that she received a UC Davis extension form for the 'Role of the Planning Commissioner' class. She noted that she had attended the class and thought it was worthwhile and advised staff that they might want to pass this along to the two new Commissioners.

**Commissioner Lalwani** commented that Vice Chair Williams would be missed and noted that he brought the wisdom and was fun to work with for the last three years. She welcomed the two new commissioners, Al Garcia and Zeya Mohsin, and said they represent the diversity of Milpitas.

**Commissioner Sandhu** also thanked Vice Chair Williams and noted he had the privilege of graduating with him from the Santa Clara Valley Leadership program and that he will be missed.

Chair Nitafan congratulated Al Garcia and Zeya Mohsin for coming aboard and thanked the City Council for hiring the most qualified candidates. Chair Nitafan also congratulated Vice Chair Williams for serving three years with the Planning Commission and three years with the Telecom Commission. He also echoed Vice Chair Williams comments about Ed Unger and Bill Rush and wished Vice Chair Williams good luck for running for the 20<sup>th</sup> district Assembly.

## **VI. APPROVAL OF AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

**Motion** to approve the agenda as submitted.

M/S: Lalwani/Sandhu

AYES: 6

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 3, 4, 5, 6, 7, 8 and  
9**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay asked that Agenda Item No. 9 ("S" Zone Approval Amendment (P-SA2003-155) be taken off of the consent calendar due to receiving new information from the applicant and the Commission agreed.

Chair Nitafan opened the public hearing on Consent Item Nos. 3, 4, 5, 6, 7 and 8.

There were no speakers from the audience.

**Close Public Hearing on  
Item Nos. 3, 4, 5 and 6 and  
Continue Public Hearing  
on Item Nos. 7 and 8**

**Motion** to close the public hearing on Item Nos. 3, 4, 5 and 6 and continue Item No. 7 to January 28, 2004 and Item No. 8 to January 14, 2004.

M/S: Williams/Giordano

AYES: 6

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 3, 4, 5, 6, 7 and 8.

**\*3 SIX MONTH REVIEW (P-PR2003-4):** A request for an existing take out restaurant (VK FOOD #3) in regards to any solid waste or odor issues and to verify compliance with all approved special conditions for previously approved Use Permit No. P-UP2002-26 at 141 Dixon Road (APN: 026-05-019). Applicant: Emily Truong. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2296) *(Recommendation: Approval with Conditions)*

**\*4 TIME EXTENSION NO. P-TE2003-7:** A request for an 18-month time extension for six (6) new apartment units located at 1129-1143 Edsel Court and 1116 & 1124 Shirley Drive (APN: 088-03-057 to 059 & 064 to 066). Applicant: Vincente Songcayawon. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2295) *(Recommendation: Approval to City Council)*

**\*5 USE PERMIT NO. P-UP2003-51:** Request to operate a label manufacturing and print shop in an existing 10,250 square foot industrial building at 472 Vista Way (APN: 086-29-068). Applicant: Tek Label & Printing. Project Planner: Staci Pereira, (408) 586-3278. *(Recommendation: Approval with Conditions)*

**\*6 USE PERMIT NO. P-UP2003-52 AND SITE AND ARCHITECTURAL (P-SA2003-150) APPROVAL AMENDMENT:** A request to modify a row of parking spaces (approximately 15 spaces) by reducing the length of the parking space from 18 feet to 15 feet and to reduce the drive aisle width from 25 feet to 23 feet to preserve five (5) protected trees at 100 N. Milpitas Boulevard (APN 28-12-021). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

- \*7 USE PERMIT NO. P-UP2003-46 AND 'S' ZONE AMENDMENT NO. P-SA2003-135:** Request to operate a child care facility for up to 36 children without providing eight (8) parking spaces and associated site improvements including parking lot modifications and new exterior gated play area in the community center of The Crossings at 757 E. Capitol Avenue (APN: 092-08-95). Applicant Montague Parkway Associates. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2355) *(Recommendation: Continue to January 28, 2004)*
- \*8 USE PERMIT NO. P-UP2003-47:** Request to operate a cafe, Starbuck's, with 34 indoor and 13 outdoor seats without providing thirteen (13) required parking spaces at 1487 Landess Avenue (APN: 088-35-011). Applicant: Zeden Jones. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2357) *(Recommendation: Continue to January 14, 2003)*

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

## VIII. PUBLIC HEARINGS

Chair Nitafan opened the public hearing on Agenda Item No. 1.

Commissioner Galang left the Council Chambers.

**1. S-ZONE APPROVAL (P-SZ2003-10), USE PERMIT NO. P-UP2003-34, VARIANCE NO. P-VA2003-3 AND EIA NO. P-EA2003-10:** A request to redevelop an existing site and construct two buildings and site improvements, at 750 E. Calaveras Boulevard.  
*Applicant: IDA.*

**Troy Fujimoto, Acting Associate Planner,** presented a PowerPoint presentation for a S-Zone Approval (P-SZ2003-10), Use Permit No. P-UP2003-34, Variance No. P-VA2003-3 and EIA No. P-EA2003-10, a request to redevelop an existing site and construct two buildings and site improvements, including a 5,000 square foot restaurant and a two-story 11,000 square foot office building, a use permit for a restaurant and for not providing eleven (11) required parking spaces, a variance for a rear yard reduction and landscape reduction and a related mitigated negative declaration at 750 E. Calaveras Boulevard. Mr. Fujimoto recommended approval with conditions based on the findings and conditions noted in the staff report.

Commissioner Giordano asked what is the unique circumstance for allowing the variance. Mr. Fujimoto responded that the unique circumstance for the variance is that the site is extremely long and narrow and has stringent standards to landscape and has a 35-foot setback. The variance is needed to reduce the side yard setback and to reduce the required landscape buffer width.

Mr. Lindsay noted that Mr. Fujimoto passed out a memo with a change to condition no. 4 that reads the following:

4. Building permit plans shall incorporate the following design modifications to the approval of the Planning Division:
  - a) Provide vertical interest to the office building roof elevation to break up the uninterrupted roofline.

- b) Modify the existing eastern elevation of the restaurant building to include additional architectural features and elements to provide interest.
- c) Modify the “cap” of the vertical element on the restaurant to better integrate with the architecture of the buildings unless this element can be repeated elsewhere in the building.
- d) Revise the perimeter/property wall to provide vertical symmetry to the architecture of the building
- e) ***At the time of revision to the plans, the use of color will be reviewed to ensure that it complements the architecture of the building.***

Commissioner Lalwani asked why were the architect and staff not in agreement with the design aspects and Mr. Fujimoto responded that they were not in agreement with some of the design elements such as the dome shape of the building.

Vice Chair Williams asked what type of material is the back wall made from along Berryessa Creek and Mr. Fujimoto responded that the wall is made out of basic masonry with stucco and tile inserts.

Vice Chair Williams mentioned his concerns of the wall becoming a target for graffiti artists and was concerned that he didn’t see any proposed shrubbery to preclude taggers from coming there. Mr. Fujimoto responded that the creek doesn’t take up the entire right of way and that anything that gets done near the creek needs to get approval from the Santa Clara Valley Water District. He noted that the building has been pushed as back as far as they could, and what was left was a five-foot setback from the building to the property line.

Vice Chair Williams asked what was the discussion between the applicant and staff to enhance the building and Mr. Fujimoto commented that first the applicant presented a different type of architecture that was very busy, and a lot of elements weren’t tied together, then staff asked them to clean it up, which they really cleaned up. He explained that staff and the applicant were trying to find a middle ground that doesn’t degrade the visual look of the building.

Commissioner Sandhu asked if the current structure will be demolished and Mr. Fujimoto responded “Yes”.

Chair Nitafan was concerned that there wasn’t going to be enough parking for the restaurant and Mr. Fujimoto explained that the applicant meets the parking requirements and that the restaurant is 2,000 feet smaller than the previous restaurant. He also noted that the applicant has done a traffic study that meets the parking requirements and that staff felt they could support the proposal without any parking reduction.

Chair Nitafan also mentioned his concerns about the nearby creek and noted that it should be cleaned annually. He explained that when it rains, there is a lot of overflow of water in the parking lot and a good grading system is needed. Mr. Fujimoto responded that when the plans go to Engineering, they would double check the drainage as proposed and the applicant will probably have to provide a study that shows there will be no flooding.

Chair Nitafan opened the public hearing

There were no speakers from the audience.

**Close Public Hearing**

**Motion** to close the public hearing.

M/S: Giordano/Williams

AYES: 5

NOES: 0

**Motion** to approve S-Zone Approval (P-SZ2003-10), Use Permit No. P-UP2003-34, Variance No. P-VA2003-3 and EIA No. P-EA2003-10 with special conditions and findings noted in the staff report and amended special condition no. 4 that is stated above.

M/S: Giordano/Sandhu

AYES: 5

NOES: 0

Commissioner Galang returned to the Council Chambers.

The Commission agreed to discuss Agenda Item No. 9 ("S" Zone Approval Amendment (P-SA2003-155) before Agenda Item No. 2 so that Vice Chair Williams could be dismissed early.

**IX. NEW BUSINESS**

Chair Nitafan opened up Agenda Item No. 9 for discussion.

**2. "S" ZONE APPROVAL AMENDMENT (P-SA2003-155):** Request to remove 22 protected trees and replace landscaping located at 542-568 Gibraltar Drive.  
*Applicant: Bedford Property Investors*

**James Lindsay, Acting Planning Manager**, presented an "S" Zone Approval Amendment (P-SA2003-155), a request to remove 22 protected trees and replace landscaping located at 542-568 Gibraltar Drive and recommended approval with the modified conditions that read as follows:

1. This "S" Zone Approval-Amendment is only for the removal of twenty-two (22) trees identified as shown on plans submitted on October 16, 2003. (P)
2. This approval shall be conducted in compliance with all appropriate local, state and federal laws and regulations and in conformance with the approved plans. (P)

3. Prior to tree removal permit issuance; the applicant shall submit a tree replacement plan for Planning Division Approval. Plans shall include the following:
  - A tree replacement ratio of two to one (22 additional trees) to offset the loss of mature trees. If a certified arborist concludes that not all twenty-two (22) additional trees can be located on the property than the remaining trees of similar value shall be placed off-site to the approval of the City's Trees and Landscaping Division. If a suitable replacement location of the trees is not possible off-site than the applicant shall pay an in-lieu fee to the City based on the cost of the number and size of box trees of the same species, delivered and installed.
  - Incorporate 3 planting strips 8 feet wide and 4 feet beyond the last tree in the row.
  - Utilize linear root barriers.
  - Replace fill with structural soil mixture.
  - Include deep watering tubes to encourage deep rooting and downward root growth.
  - Widen the existing planter strip that is located in the rear parking lot, behind Building B by two feet.

If the tree
4. Per Milpitas Municipal Code Chapter 2, Title X (Ord. No. 201), developer is required to obtain a permit for removal of any existing tree (s). Contact the Street Landscaping Section at (408) 586-2601 to obtain the requirements and forms. (E)

Regarding condition no. 3, Commissioner Giordano asked if it is appropriate to charge the applicant with an in-lieu fee that is not in place yet. Mr. Lindsay replied, "Yes" since it is in the form of a condition of approval.

Commissioner Giordano asked if this is the first time that staff has applied an in-lieu fee to an applicant and Mr. Lindsay responded, "Yes", and that the applicant has been given this condition at the same time the Commission has and he would like the applicant to provide feedback.

Commissioner Giordano asked if the in-lieu fee was the best alternative and Mr. Lindsay responded that the in-lieu fee was a last resort for the applicant and that they have two other options that are stated above.

Commissioner Lalwani asked if the applicant and staff had a prior discussion to the conditions of approval and Mr. Lindsay replied that the applicant has reviewed the conditions and they have reviewed the report.

Chair Nitafan introduced the applicant and noted that this is not a public hearing item.

**Anne Hoffman, Bedford Property Investors**, explained that this application was supposed to be a simple parking lot maintenance project and explained that the trees have done damage to the parking lot and in order to remove the asphalt, the trees have to be removed and the Arborist she hired felt that the 2:1 ratio is not appropriate because the area is maxed out with trees.

Ms. Hoffman referenced the arborist report that the trees have caused damage to the parking lot, and she wants to make sure that the parking lot is safe for the tenants. The City has accepted that the applicant needs to remove all of the trees, and one of the conditions is that the landscape strips be widened, which she is not in agreement with. Ms. Hoffman also noted that she is not in agreement with the structural soil fill since it is a new concept and can only be found one place in the bay area and prefers the traditional soil method and also disagreed with the in-lieu fee because of the current economic conditions.

Commissioner Lalwani asked if the applicant object to the fees and Ms. Hoffman replied, "Yes".

Commissioner Lalwani mentioned her confusion about the 2:1 ratio and Mr. Lindsay explained that staff is requesting two trees be planted for every tree that is being removed. He also explained that when a tree is replaced, the City loses the canopy of the trees and it takes about 20 years to replace the trees.

Commissioner Lalwani asked if 44 trees would be too crowded in the area and Mr. Lindsay replied that the City doesn't want to create an overcrowded condition and that is why they are looking at an offsite location.

**Tambri Heyden, Acting Planning and Neighborhood Serviced Director**, added that the reason why the 2:1 policy was put in place was that the City over the years has tried to achieve a no net loss in terms of the canopy, environmental, shade, oxygen, carbon dioxide, storm water, and a number of benefits to not losing trees of that size, or additional trees that can provide the canopy of a quicker rate. She explained that when you lose the size of the canopy, two smaller trees will help you get to the canopy at a quicker rate and that this new idea to the tree ordinance allows staff a greater flexibility of a no loss canopy to reach that goal, so that the City is not losing and trying to keep up.

Commissioner Lalwani empathized with the applicant and felt that the 2:1 ratio is a very heavy price to pay since it is not in the ordinance.

Chair Nitafan noted that the Commission shouldn't care about the dollar value but should look at Planning in general. He understands that the 2:1 ratio policy allows the applicant to plant trees to other areas.

Mr. Lindsay added that once the trees are planted off site, they will need to stay there and in the future, if the applicant needs to replace additional trees, staff would follow the 2:1 ratio.



Vice Chair Williams commented that the whole scenario seems perplexing in that the 2:1 ratio should depend on the type of tree. For example, he noted that if you have a small needle tree, its carbon dioxide to oxygen range ratio would be different to that of a Maple tree.

Ms. Heyden explained that she is not sure how long the policy has been in place and that the City has been using the 2:1 policy for many years and has not had any trouble. She explained that the only time tree issues come forward to the Commission is when the trees are protected and that the options mentioned to the applicant are the most cost effective. She mentioned that the policy has been effective in trying to keep Milpitas green.

In his recollection, Vice Chair Williams noted that he has had numerous discussions about protective trees and species, and this is the first time we have had this type of scenario where we are addressing the loss of canopy. He still felt that that the whole equation doesn't make sense.

Chair Nitafan noted staff might have to bring the project back to do more research.

Commissioner Giordano asked if the tree ordinance will be revised to include the in-lieu fee and Mr. Lindsay responded that the revised tree ordinance will come back in a few months.

Commissioner Giordano felt that the 2:1 ratio is a great model to allow for the integrity of the landscaping but she has an issue with the in-lieu fee. She also has a problem with the applicant being given the alternatives this evening and not enough space for the planting strips and until this ordinance is effective, she would not support staff's recommendation.

Chair Nitafan asked how many trees could the project site hold and no one knew the answer.

Commissioner Galang asked how old are the existing trees and Ms. Hoffman guessed about 15 to 20 years old.

Commissioner Galang asked why does the applicant want to replace the trees and Ms. Hoffman replied that the trees have ruined the parking lot, unsafe conditions in the parking lot, and the trees have lifted and split the curbs. She noted that the project is heavily planted with trees and there is a problem with squeezing more trees in this site and the tenants will be spending more money on maintenance for the trees.

Commissioner Galang said that he supports Chair Nitafan's recommendation to give staff more time to research the project because the Commission did not receive pictures of the replacement trees.

Ms. Hoffman mentioned her frustration that she did not receive the staff report until late on Friday and that she has spent a tremendous amount of resources on a maintenance project.

Chair Nitafan made a **motion** that he would support staff's recommendation of the 2:1 policy and that if there are extra trees, they will be planted outside the area.

Commissioner Galang and Commissioner Sandhu seconded the motion.

Commissioner Giordano still felt that a 5 by 5 space in the parking lot was not workable and asked if the Commission would be imposing an in-lieu fee.

Chair Nitafan disagreed and said that he sees spaces that could be filled up with trees.

Commissioner Lalwani needed clarification on the motion.

Chair Nitafan explained that the applicant could plant 30 trees in the parking lot and the other 14 trees could be planted somewhere else or the applicant could take the in-lieu fee option.

According to the aerial photo, Ms. Heyden noted that she could see spots where additional trees could be planted at other areas besides the planting strips.

Vice Chair Williams mentioned that he would be voting against staff's recommendation because of the systemic issue of the policy and that he is not clear as far as the implementation process goes.

Commissioner Giordano said she will be voting against staff's recommendation because she doesn't think the intent of the 2:1 ratio is to provide for the additional replacement value of mature trees where it is not feasible and doesn't think a fee should be imposed on the applicant since this is the first time it has happened.

Commissioner Lalwani felt that the 2:1 ratio is much more complicated and scientific and a lot depends on the ratio such as what kind of tree will be replaced and the environment aspect which makes it complicated. She will not be supporting the motion and would like staff to come back with better reasoning and proof of why the trees should be replaced.

Ms. Heyden noted that staff has done research on the ratio and that the City has the lowest replacement ratio than other cities.

**Motion** to approve "S" Zone Approval Amendment (P-SA2003-155) with staff's amended conditions noted above.

M/S: Nitafan/Galang

AYES: 3 (Nitafan, Galang, Sandhu)

NOES: 3 (Giordano, Williams, Lalwani)

Since this was a tie vote, Chair Nitafan asked the Commission to consider another motion.

Commissioner Giordano made a **motion** to approve "S" Zone Approval Amendment (P-SA2003-155), with utilizing any space available to plant the additional 22 trees, depending on availability of space, if it could be used, and to use up to the limitation of the 2:1 ratio, and not adding any additional charges to the applicant due to the limited availability of tree planting space in this project.

Commissioner Sandhu asked who will evaluate the number of trees that could fit on the property and Chair Nitafan replied “staff”. Chair Nitafan also added that the City has to stick with the policy of 2:1 ratio and in this case it is a special case, not a precedent to other projects in the future and the Commission agreed.

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

Vice Chair Williams left the Council Chambers.

## **X. PUBLIC HEARING**

Chair Nitafan opened the public hearing on Agenda Item No. 2

**3. USE PERMIT NO. P-UP2003-45:** A request to add auto repair activities at 1503 North Milpitas Boulevard.  
*Applicant: Automotive R & D*

**Troy Fujimoto, Acting Associate Planner**, presented Use Permit No. P-UP2003-45, a request to add auto repair activities to an existing after-market auto parts sales business without the required 11 automobile spaces at 1503 North Milpitas Boulevard and recommended approval with conditions based on the findings and conditions noted in the staff report.

Mr. Lindsay clarified condition no. 1 to read the following:

- 1. This Use Permit No. P-UP2003-45 approval is to add auto parts installation to an existing auto retail business without the eleven (11) required parking spaces, as shown on approved plans dated December 10, 2003, except as may be otherwise modified by these conditions of approval. Modifications to the proposed use (ex. adding painting, auto body work, engine or transmission repair) or removal of the retail portion of the business (change to an auto repair facility only) will require review and approval by the Planning Commission of an amendment to this Use Permit. (P)*

Chair Nitafan opened the public hearing on Agenda Item No. 2.

**Concerned Resident, representing Jensen’s School of Performing Arts, 1491 N. Milpitas Blvd.**, was concerned about additional cars speeding through the parking lot to have work done and requested that speed bumps be installed so that children don’t have to worry about getting run over. Mr. Lindsay noted that staff contacted the Police Department and were not aware of any speed problems and that the Police haven’t received any complaints.

## **Close Public Hearing**

**Motion** to close the public hearing.

M/S: Sandhu/Giordano

AYES: 5

NOES: 0

Commissioner Lalwani made a **motion** to approve Use Permit No. P-UP2003-45 and Commissioner Sandhu seconded it.

Commissioner Galang requested that the applicant come forward to speak.

**Rishie Garg, Applicant**, resident of Milpitas for six years, said he was available for questions.

Commissioner Galang asked if the doors will be closed during operation and Mr. Garg replied, "Yes".

Commissioner Galang asked what type of work would be done and Mr. Garg replied that the business sells body parts but does not install the products in house. He explained that his business will be offering tire and wheel mounting service to existing clientele, and that the business doesn't use hazardous materials. Mr. Garg also explained that the business would do car audio installation in the future.

Commissioner Galang asked if the applicant will be doing car suspension and Mr. Garg replied that they do suspension but most of the work is sent to other auto body shops on Minnis circle. Mr. Garg explained that facilities like his are stereotyped to illegal racing and speeding and wanted to make it clear that his facility is one of the few that does not condone illegal racing. The objective of his business is to inform people that there is a possibility of crashing your car or hurting public safety. He also noted that his facility would only take up 1 to 2 spots of parking at a time and the facility is ideal for him since it is only a 1/2 a mile away from his home.

Commissioner Galang asked if this business requires the use an air compressor and Mr. Garg replied, "Yes", and that it is located in the service bay area near the rear of the building. Commissioner Galang commented that he has a compressor in his office, but it is not quiet.

Mr. Garg noted that the compressor only makes noise when the tanks needs to be filled and that the tank is about 50 gallons He also noted that throughout the day, the compressor doesn't make that much noise.

Commissioner Galang asked staff if they did a check on the compressor and Mr. Lindsay replied that staff was aware of the compressor and didn't feel it would create noise around the surrounding areas. Mr. Fujimoto added that the applicant's hours are from 9 p.m. to 5 p.m. and they won't be operating in late hours.

Chair Nitafan asked if the business would have outdoor repair and Mr. Garg replied "No".

Commissioner Giordano asked where is the facility located near Jensen's and Mr. Garg replied that his business is on the north side of the parking lot and Jensen's is on the south side.

Commissioner Giordano noted that her daughter dances at Jensen's and most of the traffic is generated when parents drop off their children, and agrees that there is a safety issue when kids have to walk. She was concerned about an increase in traffic and felt that most of the applicant's customers would be going through the stoplight and not near Jensen's. She also felt that speed bumps should be implemented.

The Jensen's representative noted that the speed bumps are located in the rear of the building, not in the front.

Mr. Garg noted that the majority of the traffic in the past 2 to 3 months comes from the southern building, which is the one that Jensen's occupies, and his building doesn't have that many parking spots. The building that occupies the most parking is the Microstone computer place, but on his side of the parking lot it is very empty and very low traffic.

Commissioner Giordano commented that she would really like to help Jensen's get speed bumps but doesn't know how the Commission could tie the speed bumps to the application.

The Jensen's representative mentioned that before the meeting, he didn't know what the business was about and thought it would generate more traffic. He mentioned that he cannot control the way customers drive and that when you have an after auto markets parts store, people tend to drive faster. Commissioner Giordano commented that if speeding does cause problems in the future, Jensen's may want to talk to the property owner.

Regarding a letter dated December 2<sup>nd</sup> about a previous applicant that wanted an auto repair business, Mr. Fujimoto explained that back in the late 80's, two applications were proposed at the complex in Building C and were denied because of noise issues. Another applicant came to the City in the early 90's to apply for the same use but was discouraged to apply based on what had happened before.

Commissioner Giordano asked if the project has been properly noticed and Mr. Fujimoto replied, "Yes".

Commissioner Lalwani asked the applicant if the business will increase traffic and Mr. Garg replied, "No".

Motion to approve Use Permit No. P-UP2003-45 with special conditions noted in the staff report.

M/S: Lalwani/Sandhu

AYES: 5

NOES: 0

## **XI. NEW BUSINESS**

Chair Nitafan introduced Agenda Item No. 10 under New Business.

### **4. STATUS REVIEW OF HOUSING ELEMENT IMPLEMENTATION**

**POLICIES:** A staff presentation on housing development projects, affordable housing, and housing activities and policies. *Staff Contact: Felix Reliford.*

**Felix Reliford, Principal Housing Planner**, presented a status review of Housing Element Implementation policies on housing development projects, affordable housing, and housing activities and noted that no action is necessary.

In regards to the adjusted income level, Commissioner Giordano noted that 49.5% of the housing units are at the above moderate level. She asked if anyone is looking at breaking it down further to a higher income level at the next Housing Element review. Mr. Reliford responded that most cities do not break the category down because it is market driven, and if you can afford a house at the median price in the valley, you are at above moderate level.

Commissioner Giordano asked if the area median income is adjusted for current income or came from last year's data and Mr. Reliford responded that the current data was used for 2003.

Commissioner Giordano noted that with the recent approval of the units on Kennedy Drive, it is not included in the report under proposed projects. Mr. Reliford noted that she was right and he will add 19 units to his total.

Commissioner Giordano noted that the City should reach 55.5% of the total number of units to meet the ABAG regional fair share housing goals for the city and asked where we the City needs to be today. Mr. Reliford replied that the City is just the opposite and the City is at 28%. He explained that 4,348 units need to be provided and today the City has provided 1,217 units.

Commissioner Giordano asked if the 55.5 % includes proposed projects and asked what stage is the City at. Mr. Reliford responded that the City cannot include proposed projects because they are not developed yet.

Commissioner Giordano asked about the housing task force and Mr. Reliford said that he needs the blessing from senior management to go ahead with the housing task force but it would include bringing all of the development community together such as Tri Counties apartment association, Santa Clara County Association of Realtors, Chamber of Commerce, etc.

Commissioner Giordano asked how do low interest rate loan grants for financial assistant for affordable housing gets repaid back and how would residents know these loans are available. Mr. Reliford replied that the loans are from a CDBG program and low-income residents can apply for 0% to low interest rates. The City works with the residents and once the loan is paid, the money is put back into a revolving fund. Staff advertises in the POST and on local channel 15.

Mr. Reliford also noted that the state has extended the Housing Element deadline for the ABAG area to one more year, normally it goes from 1999 to June 30, 2006, and has been extended to June 30, 2007.

Commissioner Lalwani asked if the ABAG requirement for affordable housing is 20%. Mr. Reliford replied that ABAG does not have a requirement and explained that ABAG is the council of governments for the area and they have a mandate from the state to come out with the regional fair share for the cities and all they do is provide the numbers for the city based on housing population and job balance, and these are the numbers of housing that should be provided for income level.

Commissioner Lalwani noted that other cities have different rates for affordable housing and asked if the 20% includes senior housing. Mr. Reliford responded, "No", 20% of affordable housing is not allocated toward seniors, but that doesn't prohibit seniors for applying.

In response to Chair Nitafan's question, Mr. Reliford responded that the City is in good shape because the Midtown Plan allows the City to steer development within that area and allows the City to have greater densities.

## **5. PERSONAL RAPID TRANSIT**

**PRESENTATION:** A presentation on Personal Rapid Transit (PRT) by Rob Means, representing the Sunnyhills Neighborhood Association.

Chair Nitafan introduced Agenda Item No. 11 under New Business.

**Rob Means**, representing the Sunnyhills Neighborhood Association, presented a Personal Rapid Transit (PRT) Presentation, which is comprised of cabs, guide ways, and stations like taxicabs.

Commissioner Galang asked Mr. Means why he recommends the PRT system to the City of Milpitas. Mr. Means explained that the PRT system makes sense due to traffic congestion and pollution problems, cost of gasoline, and that cars are unsafe when they are mixed with pedestrians and cyclists. He stated that the cabs would be far safer than getting into an automobile, and less expensive, cleaner, quieter and good for Milpitas.

Commissioner Galang asked if there is another state that has this type of transit and Mr. Means responded that Skyway express is looking into the PRT technology and has a prototype vehicle in Minneapolis.

Commissioner Lalwani asked what government entity would fund this project and Mr. Means responded that funding could come from transit projects, basically money from the region, state, and federal governments.

Commissioner Lalwani asked how feasible is the project and Mr. Means replied that there are advantages such as name recognition and new technology to the City.

Commissioner Giordano mentioned that she had watched the PRT video and thought there was a location of the system in Minneapolis. Mr. Means responded, "No", and explained that Minneapolis only has a minimal prototype.

Commissioner Giordano asked who will be owning the project and Mr. Means replied that the PRT system would have to be owned by public agencies because they wouldn't make money, just like the bus systems. He explained that with PRT Technology, it is inexpensive to build and operate and also noted that a study was done in Palo Alto and it looked like the PRT system would be able to make money.

Commissioner Sandhu asked if the PRT system is safe and Mr. Means explained that the PRT system is actually much safer than cars driving around because it is automatically controlled. He explained that there are no crossovers, no intersections, and the system would merge when a pedestrian gets off of the system. He said that seniors and young people would be able to use the system to their advantage.

Commissioner Sandhu asked how will the project be designed and Mr. Means explained that the PRT system would be designed like a guide way, the poles would hold it up, and it would be about 16 feet in the air.

Chair Nitafan asked Mr. Means how long has he been promoting the project and Mr. Means replied, "2 years".

Chair Nitafan suggested that Mr. Means have a specific timeline to get the project where it needs to go. Chair Nitafan also suggested that Mr. Means convince the City Council to put the project on the five year Capital Improvement plan, and offer a feasibility study, and funding structure. He also recommended that Mr. Means set up a task force.

Commissioner Galang agreed that Chair Nitafan offered good advice and added that the PRT system seems very interesting and exciting and recommended that Mr. Means might want to invite a Council member to attend a trip to Minneapolis to see their PRT system.

Mr. Means handed out a survey and Commissioner Galang and Chair Nitafan requested a videotape and Mr. Means agreed.

## **XII. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:01 p.m. to the next regular meeting of January 14, 2004. Chair Nitafan wished everyone a Merry Christmas and Happy New Year.

Respectfully Submitted,

James Lindsay  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary



**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**November 12, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Lalwani and Sandhu  
Absent: None  
Staff: Heyden, Lindsay and Rodriguez

**III.  
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

**Rob Means, 1421 Yellowstone**, representing the Sunnyhills Neighborhood Association, noted that the Association reviewed the plans for BART, but was concerned that the nearest station is 3 ½ miles away and that citizens would have to drive to the Great Mall station. Mr. Means suggested that people could be transported using the Personal Rapid Transit (PRT) System and suggested presenting the information on the system at another Planning Commission meeting. The Commission agreed to agendize the PRT system at the next meeting.

**IV.  
APPROVAL OF MINUTES  
October 22, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of October 22, 2003.

There were no changes from staff.

**Motion** to approve the minutes as submitted.

M/S: Lalwani/Williams

AYES: 6

NOES: 0

**V.  
ANNOUNCEMENTS**

**James Lindsay, Acting Planning Manager**, announced that there will be only one meeting in November and that the 2<sup>nd</sup> meeting is canceled due to the Thanksgiving holiday. Mr. Lindsay also noted that the December 10<sup>th</sup> Subcommittee meeting will be very heavy as a result of the Parc North project coming back for design review, and that the meeting will start at 5:30 p.m. instead of 6:30 p.m.

**Commissioner Giordano** recalled that at the last meeting, Council adopted the variance of impervious surface coverage at 510 Vista Spring Court. She noted that when the project came forward to the Planning Commission, she asked staff if they could discuss whether decking would be considered part of the impervious surface calculations. Commissioner Giordano also noted that the Council approved a contract by Sentinel to look at the City's fair housing and would like the Commission to be copied on the report.

Mr. Lindsay agreed that staff would bring back the discussion of wood decking and also that the Commission would be copied on the report.

Chair Nitafan announced that the Knights of Columbus is hosting the annual Thanksgiving dinner for the poor and the needy on November 27<sup>th</sup> at St John's Pavalkis Hall from 11 a.m. till 3 p.m. He also noted that this is the 25<sup>th</sup> annual dinner and is well attended every year and that donations are appreciated and wished everyone a Happy Thanksgiving.

**Commissioner Galang** asked what type of dinner will take place and Chair Nitafan replied that it is a free dinner for the poor, needy and lonely and anyone can attend.

## **VI. APPROVAL OF AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

**Motion** to approve the agenda as submitted.

M/S: Lalwani/Galang

AYES: 6

NOES: 0

## **VII. CONSENT CALENDAR Item Nos. 3, 4, 5, 6 and 7**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

**Don Peoples, Owner at 529 South Main Street**, requested that Item No. 5 be taken off of the consent calendar and the Commission agreed.

Chair Nitafan opened the public hearing on Consent Item Nos. 3, 4 and 6.

There were no speakers from the audience.

## **Close Public Hearing on Item Nos. 3, 4 and 6**

**Motion** to close the public hearing on Item Nos. 3, 4 and 6.

M/S: Williams/Giordano

AYES: 6

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 3, 4, 6 and 7.

**\*3 USE PERMIT NO. P-UP2003-38 and 'S' ZONE APPROVAL AMENDMENT NO. P-SA2003-120:** A request to install three (3) telecommunication antennas and associated equipment cabinets on the Embassy Suites Hotel rooftop located at 901 E. Calaveras Boulevard (APN: 028-26-001). Applicant: MetroPCS. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2350) (*Recommendation: Approval with conditions*)

**\*4 SIX-MONTH REVIEW (P-PR2003-3) OF "S" ZONE APPROVAL AMENDMENT (P-SA2001-84):** A six month review for the Pro Home Depot store to review compliance with all previously approved conditions of approval at 1535 Landess Avenue (APN: 088-35-017). Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2278) (*Recommendation: Note receipt and file*)

**\*6 USE PERMIT NO. P-UP2003-35:** Request to operate a video store located at 769 East Capitol Avenue (APN: 092-06-033). Applicant: Cindy Hong. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2348) *(Recommendation: Approval with conditions)*

**\*7 ADMINISTRATIVE ITEM NO. P-AD2003-17:** Approve 2004 Planning Commission meeting schedule provided in the agenda packet. Acting Planning Manager: James Lindsay, (408) 586-3274. *(Recommendation: Approval)*

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

## **VIII. PUBLIC HEARINGS**

Chair Nitafan opened the public hearing on Agenda Item No. 1

**1. SIX-MONTH REVIEW OF USE PERMIT NO. 1488 AND USE PERMIT AMENDMENT NO. P-UA2003-21:** *Verification of compliance with conditions and request for modification of conditions that pertain to live entertainment, number of bar stools and percentage of liquor sales for Ola's Corner Restaurant at 167 S. Main Street. Applicant: Ola Hassan. Project*

**James Lindsay, Acting Planning Manager,** presented a six-month review of Use Permit No. 1488 and Use Permit Amendment No. P-UA2003-21, verification of compliance with conditions and request for modification of conditions that pertain to live entertainment, number of bar stools and percentage of liquor sales for Ola's Corner Restaurant at 167 S. Main Street. Mr. Lindsay recommended approval of modified conditions of approval.

Commissioner Giordano recalled that Ola's Corner was previously called Campbell's Corner bar and asked staff what is the concern. Mr. Lindsay replied that the original concern was that Campbell's Corner was a bar and did not have a Use Permit and the facility predated the zoning regulations that were in place, so that when Ola Hassan took over, they had nothing to go with so the applicant had to apply for new permits. Staff was concerned about impacts to Main Street, prior to the idea of a mixed-use district with entertainment envisioned in the Midtown Plan, in addition to the number the parcel did not have enough parking spaces for a bar. Mr. Lindsay explained that the applicant came in with a restaurant use and the bar was ancillary to the restaurant at the time and live entertainment was not allowed. Staff felt that live entertainment will be an asset to the business and also added that the applicant is in full agreement with the conditions.

Chair Nitafan introduced the applicant Ola Hassan.

**Ola Hassan, Owner at 167 S. Main Street,** thanked staff and the Commission for supporting the project.

**Reverend Dan Mills, pastor of Spring Valley Bible Church, Main Street,** noted that he is against alcohol and bars in the community and would not support the project. He felt that the morale of society is for good things and doesn't see how a bar reflects this on the Main Street plan and that this type of use is not an asset to the community.

## Close Public Hearing

**Motion** to close the public hearing.

M/S: Sandhu/Williams

AYES: 6

NOES: 0

Commissioner Galang asked staff to clarify special condition no. 5 which reads the following:

5. *Alcohol sales shall be secondary to food sales in gross revenue to ensure conversion of nightclub does not occur. (Police, P, modified on 11/12/03)*

Mr. Lindsay explained that the intent of the condition was to ensure that the facility would not turn into a bar, and that the use would predominantly be a restaurant, and that the alcohol sales were there as a secondary use to the restaurant. He explained that as long as food sales exceed the alcohol sales, then you have a restaurant with a bar, and not a bar with a restaurant.

Commissioner Galang asked if the Alcoholic Beverage Control (ABC) imposed any restrictions to Ola's Corner. Mr. Lindsay explained that Ola's Corner has a type 47 ABC license that means he can serve all types of alcohol as long as he is serving food until 2 a.m. He also added that if at anytime that Ola's alcohol sales exceed his food sales, then he will be in violation of condition no. 5.

**Commissioner Lalwani** empathized with Reverend Dan Mills and explained that she does not drink alcohol, nor does she encourage drinking, but felt that those who drink will find a place, so why not have an establishment that is properly established and let the people go there and drink.

Regarding special condition no.13 which reads the following: *The business shall stop service of alcohol at 1:30 AM*, Commissioner Galang asked if patrons could stay at the restaurant after 2 a.m. Mr. Lindsay replied that there is not a restriction of hours of food sales, and the applicant can serve food throughout the night, but the alcohol service needs to cease at 1:30 p.m. to be consistent with the condition.

**Motion** to approve the six-month review of Use Permit No. 1488 and Use Permit Amendment No. P-UA2003-21 with special conditions and modification of conditions that pertain to live entertainment, number of bar stools and percentage of liquor sales for Ola's Corner Restaurant at 167 S. Main Street.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**Vice Chair Williams** commented that this project has been a very long process and empathized with Reverend Dan Mills and hopes that he continues to outreach those that may not be able to handle the usage of alcohol. He also added that there are still a number of restaurants on Main Street that serve alcohol that give patrons the right to select usage.

Chair Nitafan opened the public hearing on Agenda Item No. 2.

**2. USE PERMIT NO. P-UP2003-40:** *A request to operate an internet cafe in the Foothill Square shopping center located at 365 Jacklin Road. Applicant: Allan Uy.*

**James Lindsay, Acting Planning Manager**, presented Use Permit No. P-UP2003-40, a request to operate an internet cafe in the Foothill Square shopping center located at 365 Jacklin Road. He noted that a number of these applications have come before the Planning Commission, and the Commission made an interpretation that these facilities would be best parked at a restaurant parking ratio. At the last meeting staff was asked to look at the parking demand ratio, and contacted the City of San Jose and other businesses about parking ratios for computer centers. Staff is recommending that the Commission consider a standard commercial retail ratio of one space per 200 square feet for these types of uses. He explained that there is a three parking stall difference using this approach and recommended approval with conditions based on the findings and conditions noted in the staff report.

Commissioner Giordano recalled the computer learning center arcade that came forward at the last meeting, and asked staff if they used the one space per 200 square feet parking ratio. Mr. Lindsay replied that the restaurant parking ratio was used and this is the first time staff will be using the one space per 200 square feet ratio.

Commissioner Giordano mentioned that staff was going to look into changing the language of this type of use for the future. Mr. Lindsay explained that staff is adding this to the list of items that will be considered for the next round of zoning amendments so as not to rely on the arcade definition.

Vice Chair Williams was concerned about parking and asked if the applicant will be having gaming tournaments or invitational tournaments and what is the frequency. Mr. Lindsay deferred the question to the applicant.

Commissioner Lalwani commented that this type of use brings two people in a car such as a father and child so she supports the parking ratio.

Chair Nitafan mentioned his confusion with the internet café definition and felt it does define the entire business since there will be computer stations. He asked if staff has a better word to describe the use. Mr. Lindsay explained that when staff proposes the amendment to the zoning codes, staff would change the classification so that an internet café will be referred to as a learning center. Both types provide high-speed internet connection and the differing factor is that some establishments serve food and some have coin operated food, but the predominant business model is high-speed internet access to provide gaming.

Chair Nitafan invited the applicant to speak.

**Kelly Erardi, representing Shapell industries**, commented that he is available for questions and the applicant is available to answer questions.

Vice Chair Williams asked the applicant if he plans on having local tournaments or invitation tournaments and what is the frequency of the tournaments and if the applicant will have training or tutorials.

**Tuan Lee, Applicant**, explained that the business would have regional tournaments quarterly which draws from a local crowd. As far as invitation only, he explained that the winners would go to another larger center that is opened in San Jose. As far as other activities, he explained that he doesn't have anything set up and that the staff teaches any new people anything they need to know and general knowledge is given to them.

Commissioner Lalwani asked if Mr. Lee has another center in San Jose. Mr. Lee responded that he has a total of five centers, two of which are in San Jose.

Commission Galang asked that if he didn't know anything about computers would he be able to make an appointment. Mr. Lee explained that the staff would be able to show him the basics such as setting up an account with the system and that his business does not have general curriculum. The software tracks the users time and the user purchases time by the hour. Once a name is entered in the computer, the application is available for the internet and chat programs. He also explained that most users are familiar with the internet.

**Commissioner Sandhu** asked if the applicant is acceptable to all the conditions of approval. **Allan Uy, Applicant**, replied that they are in agreement to all of the conditions.

Chair Nitafoan asked how many tournaments would there be and Mr. Lee replied that he has one-day tournaments. Regarding traffic, Mr. Lee explained that utilization of the 34 computer stations is about 30 to 40%, peaking after school and weekends.

Vice Chair Williams asked what type of tournaments are conducted and Mr. Lee explained that Warcraft and Counterstrike games are played.

Chair Nitafoan opened the public hearing on Agenda Item No. 2.

There were no speakers from the audience.

#### **Close Public Hearing**

**Motion** to close the public hearing.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**Motion** to approve Use Permit No. P-UP2003-40, with special conditions and findings noted in the staff report.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

**3. TIME EXTENSION**  
**NO. P-TE2003-5:** *Request for a one-time, 18-month time extension for a previously approved Buddhist temple expansion (P-SA2002-20 and P-UA2002-5) for the Avatamsaka Buddhist Lotus Society at 50 S. Main Street. Applicant: Tien Inn Master*

Chair Nitafan opened the public hearing on Agenda Item No. 5.

James Lindsay, Acting Planning Manager, presented a Time Extension No. P-TE2003-5, a request for a one-time, 18-month time extension for a previously approved Buddhist temple expansion (P-SA2002-20 and P-UA2002-5) for the Avatamsaka Buddhist Lotus Society at 50 S. Main Street and recommend approval with conditions.

Commissioner Giordano noted that the Use Permit expired on November 6<sup>th</sup> or November 8<sup>th</sup>, and asked if the applicant applied for the extension before the expiration and Mr. Lindsay replied, "Yes".

Commissioner Giordano asked if the reason for the extension was because the applicant had not purchased the adjoining land and needed to revise their plans from the original approval for redesign of the building. Mr. Lindsay replied that he was not aware of those issues but was aware that the plans that were submitted did not conform to the approved drawings of the Planning Commission.

Don Peoples, Owner at 529 S. Main Street, representing himself, explained that he has been trying to pay attention to what is going on Main Street, and felt that if this variance is granted without public comment, it is obvious that the applicant has not complied with the Midtown plan. He felt that it is a very precarious situation to have a parking lot on the corner of Main Street and Carlo Street and that is everything against the Midtown Plan and that the building could have been designed better with a new building in the back and the parking in the front. He has concerns about the whole concept and strongly recommends public comment on this. He is also concerned that the applicant had 2-½ year to complete the project and they have not completed it on time.

Commissioner Lalwani asked Mr. Peoples what his specific concern is. Mr. Peoples replied that the Midtown Plan has made a vision for Main Street and in the 1950's, people would put the parking lot in the front so peoples can see all the empty parking spaces. In the Midtown Plan, you want to hide the parking so that it is not the prominent feature. He felt that the project could have been designed to move the sanctuary in the front and move the parking lot in the back.

**Motion** to close the public hearing.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

**Attorney Faubion** explained that if the applicant applies for the time extension prior to the expiration, than it keeps the application alive. She couldn't say for sure, but recalled that the original project was noticed and recalled discussion of it, but staff could confirm if the public hearing took place. At this point, the applicant has an approval and all they are requesting is at time extension.

Chair Nitafan stated that he thought the project was properly noticed properly and recalled that there were a lot of speakers that filled up the chambers and it was approved and agreed with Attorney Faubion.

Commissioner Giordano mentioned Mr. People's comments about a variance and Mr. Lindsay replied that there is no variance request.

Vice Chair Williams mentioned that he was confused with Mr. People's comments about the project not being publicly noticed and also recalled that when the project came forward, the applicant had proposed three buildings with underground parking, and that there was a lot of dialogue concerning the design. He remembers that it was publicly notice and said he could understand the time extension with respect to the economy and engineering conditions. He felt that the building was one of the most beautiful structures there to help beautify that section of main street. Based upon what has taken place, he would vote for an extension on behalf of the applicants, and that they will be able to succeed to have there place of worship.

**Steve Yen, Architect**, explained that he has been working on the project for the past 4 years and agreed that it will beautify the corner of Main Street and Carlo Street, the gate of the City of Milpitas. He explained that a parking lot is designed at the corner and will have a beautiful landscaping surrounding the parking so that no one can see it. Also, the building was designed in the back so that a mini-park could be created for pedestrians walking to the building.

Commissioner Giordano asked what are the requirements for landscaping. Mr. Lindsay asked the Commission to refer to their plans and pointed out the landscaping. Chair Nitafan added that at the time, the Commission scrutinized the drawings.

**Motion** to approve Time Extension No. P-TE2003-5 with special conditions noted in the staff report.

M/S: Williams/Lalwani

AYES: 6

NOES: 0

## **IX. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:08 p.m. to the next regular meeting of December 10, 2003

Respectfully Submitted,

James Lindsay  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary



**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**October 22, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Hay, Lalwani and Sandhu  
Absent: None  
Staff: Heyden, Lindsay and Rodriguez

**III.  
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
October 8, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of October 8, 2003.

There were no changes from staff.

**Commissioner Lalwani** revised the paragraph on Page 7 to read the following:

*Commissioner Lalwani pointed out to Mr. McNeely that she found a picture along with the address of the Montague Court buildings rented by South Bay Development Company and showed the picture to Mr. McNeely.*

**Commissioner Giordano** revised the paragraph on Page 7 to read the following:

*Commissioner Giordano is concerned about the budget for the Adobe project and asked how long the project has been on hold.*

**Motion** to approve the minutes as amended.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

**James Lindsay, Acting Planning Manager**, noted that the resignation of Commissioner Hay creates an opening on the Planning Commission Subcommittee and the new alternate is Commissioner Lalwani for the rest of the term.

**Commissioner Hay** asked if he could have two minutes to speak at the end of the meeting and the Commission agreed.

Commissioner Giordano announced that she attended the very informative BART Land Use Tour and thanked staff for allowing her to go. She also commended Mayor Esteves who was part of the steering group that put the tour together.

**VI.  
APPROVAL OF  
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

**Motion** to approve the agenda as submitted.

M/S: Lalwani/Williams

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 2, 3, 4, 5, 6 and 7**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Commissioner Giordano asked to remove Item No. 4 (Use Permit No. P-UP2003-33) and Item No. 7 ("S" Zone Approval Amendment No. P-SA2003-128) from consent and the Commission agreed.

Chair Nitafan opened the public hearing on Consent Item Nos. 2, 3, 5 and 6.

There were no speakers from the audience.

**Close Public Hearing on  
Item Nos. 2, 5 and 6**

**Motion** to close the public hearing on Item Nos. 2, 5 and 6 keep the public hearing open and continue consent Item No. 3 to November 12, 2003.

**Keep Public Hearing open  
on Item No. 3**

M/S: Williams/Giordano

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 2, 3, 5 and 6.

**\*2 USE PERMIT NO. P-UP2003-36:** Request to operate an automotive smog test center located at 1358 Minnis Circle, zoned HS-Highway Services (APN: 022-02-040). Applicant: Kevin Wong. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2347) (*Recommendation: Approval with conditions*)

**\*3 SIX-MONTH REVIEW OF USE PERMIT NO. 1488:** Verification of compliance with conditions of approval for Ola's Corner Restaurant at 167 S. Main Street (APN: 086-08-049) Applicant: Ola Hassan. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2349) (*Recommendation: Continue to November 12, 2003*)

**\*5 SIX-MONTH REVIEW OF USE PERMIT AMENDMENT NO. P-UA2002-21:** (*Continued from October 8, 2003*) Verification of compliance with all conditions of approval including maximum number of seats and ensuring trash bins are kept within the existing enclosures at 89 S. Park Victoria Drive (APN: 088-04-048). Applicant: Manuel Montono. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2334) (*Recommendation: Approve modified condition of approval*)

**\*6 TIME EXTENSION (P-TE2003-4):** A request for a one time, 18-month time extension of a previously approved Hillside Site and Architecture Review and Use Permit for a 1,100 square foot hillside guest house at 461 Vista Ridge Drive, zoned R1-H, Single Family Hillside (APN: 042-30-007). Applicant: Javier Mercado. Project Planner: Troy Fujimoto, (408) 586-3287. (*Recommendation: Recommend approval to City Council with approved conditions*)

M/S: Giordano/Williams

AYES: 7

NOES: 0

## **VIII. PUBLIC HEARINGS**

Chair Nitafan opened the public hearing on Agenda Item No. 1

### **1. SIX MONTH REVIEW OF USE PERMIT NO. 1532 (P-UA2003-17):**

*Verification of compliance with all conditions of approval for Use Permit No. 1532 for a cafe (Q-Cup) at 1679 N. Milpitas Blvd. Applicant: Ted Chen, Q-Cup.*

**James Lindsay, Acting Planning Manager**, presented a six-month review of Use Permit No. P-UA2003-17; verification of compliance with all conditions of approval for Use Permit No. 1532 for a cafe (Q-Cup) at 1679 N. Milpitas Blvd.

Mr. Lindsay noted that the Use Permit was granted 3 years ago, and now a new tenant is operating the business and not serving alcoholic beverages. Staff discovered that the six-month review for the Use Permit was never performed and that the applicant was not in compliance with special condition no. 1. Staff also found that the patrons are creating excessive noise after 9 p.m., which is affecting the adjacent mobile home park. Mr. Lindsay recommended approval of new conditions based on the findings and conditions noted in the staff report.

Commissioner Hay noted that on April 7<sup>th</sup>, code enforcement received a complaint about noise and was concerned that the property owner wasn't notified until July 11<sup>th</sup>. He asked if staff missed something in the process. Mr. Lindsay replied that a response to the applicant was initiated once the complaint was verified and validated.

Commissioner Hay wanted to know if a changeover in ownership occurred during that time and Mr. Lindsay replied that the noise complaint came with the new tenant.

**Vice Chair Williams** asked if staff had an opportunity to visit the site during the evening when the chairs and tables were outside. Mr. Lindsay replied that the seats were outside when staff observed excessive noise but a count was not made on the exact number of tables.

Commissioner Lalwani noted that on page 3 of 5, Planning and Police staff concluded that the noise complaints came from the exterior activity attributable to Q-Cup patrons, including the outdoor seating, the open doors and from people loitering in the parking lot. She asked if the owner is liable for the noise activity. Mr. Lindsay stated that staff believes the owner is liable because the patrons are consuming the beverages in the parking lot and the car activity is attributable to the patrons and the applicant should be held responsible.

Commissioner Lalwani asked if the business owner is held responsible for anything that happens in the parking lot and Mr. Lindsay replied that the activity that is occurring in the parking lot is from patrons of the business and the same conclusion can't be made for general activity that can't be attributable to the business.

**Commissioner Galang** noted that on page 3 of 5, staff received a comment letter on the application regarding the housekeeping of the parking lot and asked what does the housekeeping refer to. Mr. Lindsay replied that the housekeeping refers to trash accumulation that occurred in the parking lot such as cups, straws and pearls. He also mentioned that upon staff's review, the business owner did not have time to clean up and that these are some of the items that staff will be looking at for the three-month review.

Regarding added special condition no. 16, Commissioner Galang wanted to know why staff is recommending a three-month review versus six months. Mr. Lindsay explained that due to the noise impacts to the residential neighborhoods, six months is a long time to wait to reduce noise levels and staff felt three months to be more appropriate to rectify any non-compliance issues sooner.

Commissioner Galang asked if staff is going to require a three or six month review if there are no complaints and Mr. Lindsay replied that if the conditions are effective, staff would re-evaluate them and determine their applicability.

Vice Chair Williams commented that with the winter months coming up, there is a possibility that outdoor activity would be curtailed. He questioned whether three months would be the proper time to do an assessment of outdoor activity. Mr. Lindsay replied that the café is a very popular establishment and with school being out during that time, a three-month review could be done.

Vice Chair Williams replied that he wants to be fair to the applicant and respects that young people need a place to meet and talk and any place operating late in the evening could be volatile.

Chair Nitafan noted that the business owner was notified twice (both in April and in October) that outdoor seating was not allowed and asked if the reason for non-compliance was due to the change in ownership. Mr. Lindsay replied that the applicant stated they were unaware of the restriction of the outdoor seating.

Chair Nitafan asked how staff plans to enforce condition no. 13 which reads the following:

*13. Regarding added condition no. 13, "No Loitering" and "Parking for Crescent Square Patrons Only, All Others Will Be Towed" signs shall be installed in the Crescent Square parking lot. The applicant shall submit a site plan to the Planning Division indicating the location of all signage.*

Mr. Lindsay replied that staff is asking that the business owners enforce this. He explained that Condition no. 15 speaks to the business owner giving them the authority to tow patrons and that the applicant felt that some of the customers are coming from across the street and meeting with their patrons. Condition no. 15 reads as follows:

*15. During all hours of operation for the business at the said location, the business owners shall be responsible for enforcing the no loitering and no parking provisions established by the signs required in condition of approval No. 13 and controlling the noise generated by their patrons on the site. The Milpitas Police shall be contacted when additional enforcement is necessary.*

Chair Nitafan invited the applicant to speak.

**Ted Chen, Applicant of Q-cup café**, gave a background description of the business and mentioned that the business has been opened since December 1, 2002 and provides lots of employment opportunities and is a safe and clean environment for teenagers. He mentioned there have been no major incidents for the past 10 months involving customers or the business and that Q-cup was voted the best place to hang out by Milpitas High students.

Mr. Chen acknowledged that the City notified him that he did not have permits for outdoor seating, in which he called the landlord and the landlord claimed that they did have the outdoor seating on the original plans for the use permit. He explained that staff called him and said that the business requires a six-month review and that he didn't understand since the original use permit stated that a review is required for the sale of alcohol. He explained that the business does not even serve alcohol. Mr. Chen explained that he has been meeting several times with the City and felt that it wasn't fair to have a six month review because it does not apply to his business.

Regarding the garbage issues, Mr. Chen explained that Q-cup employees are responsible to pick up garbage during closing time and the landlord cleans twice a week. Employees are told not to pick up non Q-cup litter that is generated from other businesses.

Regarding complaints and police reports, Mr. Chen felt that staff implied that there were twenty complaints from residences, when he was told there were only four complaints. He felt that it was ridiculous and that the City was blowing the whole thing out of proportion. He also felt that the City is hassling him with new conditions.

**David Do, Applicant of Q-cup café**, also felt that the Planning department never tried to help him solve the problems and made him feel like he had a number of complaints. He said that out of the blue, staff required a six-month review and he didn't understand why. Mr. Do is questioning the fairness of the situation and added that Q-cup should not be responsible for all of the noise in the parking lot.

In reviewing the staff report, Commissioner Hay noted his confusion that he thought the six-month review was for the commencement of sales of beer and wine and asked the City Attorney to further explain this.

**Attorney Kit Faubion** explained that the six-month review was intended only for beer and wine sales and the words that state six months or the sale of beer and wine, whichever comes first, suggests that if the six months should have passed before the beer and wine sales, the applicant would have to of had a review. She explained that it is unclear that if the commencement of beer and wine sales would have begun the review would have been triggered, and the wording suggests that it would have happened that way. She also stated that the Planning Commission could consider this a code enforcement issue.

Commissioner Hay was confused since he felt that the six-month review is being brought forward because of alcohol sales, not code enforcement issues.

Mr. Lindsay explained that code violations are handled at staff level with violations to the municipal code, and staff has a history of trying to resolve the non-compliance issues of conditions such as outdoor seating and noise. He explained that the purpose of the review is to review compliance of the conditions. In this case, staff determined that the applicant was not in compliance with condition no. 1 and took this opportunity to address the noise complaints.

Commissioner Hay asked if the outdoor seating was the issue and Mr. Lindsay replied that regardless if the business was not in violation of the seating, and not subject to any noise complaints, the Commission would still be reviewing the issues.

Commissioner Hay asked what is the alternative for the City to address the noise problem and the loitering. Attorney Faubion explained that there appears to be a connection with the outdoor seating and the noise problem, it could be separate, but it does seem like there is a connection. The Commission has an option to keep them together through the conditions, or to keep them separate as well.

Commissioner Hay asked if the Commission chose to take away the outdoor seating and close the doors and the problem continues, how would the City address the problem. Mr. Lindsay commented that staff supports two alternatives - 1) The applicant hire a security guard to control the patrons or 2) reduction of hours.

Commissioner Hay asked if the conditions that staff has suggested include the reduction of hours or the security guard. Mr. Lindsay replied, "No" and that staff was hoping that less stringent measures would be able to solve the problems.

Commissioner Hay asked the applicant if they are o.k. with staff's added special conditions and Mr. Do replied that the main problem with him is the three-month hearing, but he does not have a problem with the other conditions.

Mr. Do explained that every hearing costs a lot of money and he is already having trouble making money in this economy. In regards to what the City Attorney pointed out about the connection with outdoor seating and noise, Mr. Do explained that the patrons do talk, but not that loud and the noise comes from car engines from the parking lot and from the street.

Commissioner Hay asked if the parking spaces are shared by the whole center and Mr. Do said, "Yes" and added that the City should have approved a sound proof wall in the shopping center.

Commissioner Galang asked what type of food and drinks are served. Mr. Do replied that coffee, tea, fish bowl, chicken and squid and crepes are served. He added that they have Caucasian clientele during the day but mostly Asian teenagers at night.

Commissioner Galang asked if the applicant sells beer and wine and Mr. Do replied "No".

Commissioner Galang was concerned that the applicant would be allowed to serve beer and wine when most of their customers are students. Mr. Do explained that the previous owner had a permit to sell beer and wine. He added that the whole process has been unfair and noted that Q-cup is a well-lit place for kids to just talk and hang out and that Q-cup has a free wireless internet and is free for use for customers.

**Commissioner Sandhu** referenced the handout that the applicant passed out, and noted that in the second page, there is a statement that the applicant felt unfairly harassed by the City. Commissioner Sandhu asked the applicant if they base their opinion due to the hearing or about a specific complaint. Mr. Do responded that he felt that the City did not try to work with him to come up with a solution and felt it was a hassle attending the hearing when the planning department could of just explained the conditions.

Commissioner Sandhu asked the applicant if they felt that it is part of the City's responsibilities to get the issues resolved. Mr. Do agreed with Commissioner Sandhu but still contended that the process was a hassle and felt that this should have been a code enforcement issue, not a public hearing.

Regarding Mr. Chen's earlier statement about litter in the parking lot, Vice Chair Williams asked if the applicant was aware of whom the litter belonged to. Mr. Chen replied that the litter belonged to Tokyo Express, Quizno's and Starbucks.

Vice Chair Williams commented that young people want to attract others and Q-cup may bring others from other businesses, which may cause excess litter and noise.

Mr. Chen explained that he wrote a letter to staff regarding cars that are loitering in the parking lot from across the street during lunchtime and dinnertime and it is a parking problem because a lot of customers that go to the business are walking from across the street.

Commissioner Lalwani asked staff how they found out that the applicant did not sell beer and wine and Mr. Lindsay replied that staff found out after a site visit. Commissioner Lalwani stated that condition no. 12 should be voided since the applicant does not sell beer and wine. Mr. Lindsay replied that if the condition were worded differently, then it would be correct.

Regarding the nature of the complaints, Commissioner Giordano asked if staff knows who made the complaints and how many were there. Mr. Lindsay replied that the applicant had the perception that there were over twenty complaints, but in looking at the memo, there were five complaints.

Mr. Do stated that after 9 p.m., there is a lot of traffic of Milpitas Boulevard, which generates a lot of noise. He explained that one of the main complaints is noise from the parking lot and claims that it is not related to his business.

Commissioner Giordano asked if the complaints were from one individual or five different individuals. Mr. Lindsay replied that he was not aware of the actual numbers of people, but clearly they came from the mobile home park.

Chair Nitafan asked the applicant if they are at the premises at all times since they are held responsible. Mr. Do replied that he is there most of the time and has a video camera that is monitored through the internet and Mr. Chen lives about one minute away and is there on most days.

Chair Nitafan asked about the frequency of complaints and Mr. Lindsay replied that he does not know since information is anonymous.

In regards to condition no. 12, Chair Nitafan commented that since the clientele of this business has changed, he would like staff to revoke their permits for sales of beer and wine. Mr. Lindsay replied that the conditions could be modified that removes their ability to have beer and wine sales and therefore be stricken from the Use Permit.

Chair Nitafan asked the applicant if they were o.k. with that and they replied yes. Mr. Lindsay – after consulting with the city attorney- said it would be better to remove the beer and wine sales at a future hearing, such as the three-month hearing.

Chair Nitafan opened the public hearing.

**Dolores Huvey, 120 Dixon Landing Road**, commented that she has made twelve calls to the police about noise at Q-cup. She stated that as winter approaches, there would be less outside activity. She explained that the noise is not just at night but also during the afternoon. When she has called police, they came and the noise stopped, but as soon as the police leave, the noise comes back. She explained that the noise is mostly boom boxes and she has seen kids and adults coming with food from other places and getting coffee and tea and coming back outside.

**Hermilo Isla, 4070 Dundee**, commented that he has eaten at Q-cup before and has seen a lot of kids that just hang out there after school. He explained that in the Midwest, they have noise ordinances that say “noise free zone”. He recommended that the Planning Commission display a noise ordinance sign to limit the noise.

## **Close Public Hearing**

**Motion** to close the public hearing.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Commissioner Giordano asked Mrs. Huvey how close is her home to the business and Mrs. Huvey explained that her home is on the other side of the wall, about two homes back.



Commissioner Hay commented that the City strongly endorses that businesses be good neighbors and tries to find ways to co-exist peacefully in the various neighborhoods. Given that philosophy, he urges the applicant to address the problem to the extent that they can. His belief is that the intent was to expand the six-month review to include conditions that were previously approved in January of 2000 that didn't have a six-month condition. He felt that the problem needs to be addressed as a code enforcement issue at staff level and he is not going to support staff's recommendation. He also felt that an amendment to the use permit be brought forth at another time to remove the alcohol permit.

Vice Chair Williams agreed with Commissioner Hay, and suggested that staff initiate some kind of agendaized meeting with the property owner and use the Midwest placards to address a noise free zone just like San Jose used for a cruise free zone.

Chair Nitaфан agreed with his fellow Commissioners.

**Motion** to deny the Six-Month Review of Use Permit No. 1532 (P-UA2003-17).

M/S: Hay/Lalwani

AYES: 7

NOES: 0

Commissioner Hay asked what would happen if the problems continue and Mr. Lindsay responded that staff would use the municipal code to enforce the noise complaints that are being generated from the business.

Vice Chair Williams asked if staff will follow up and look at the noise issue in the future and Mr. Lindsay replied that staff would work with both the applicant and the property owner.

Vice Chair Williams commented that a lot of the time, it is the property owner that seems to be the root of the problem when opportunities of improvement take place. He suggested again that staff address issues with the owner and not just with the applicant.

**Frank De Schmidt, Milpitas Chamber of Commerce**, commented that several years ago, he had a restaurant in town where people would loiter in the parking lot and had their boom boxes on. He worked with a couple of City Attorney's and they suggested posting signs by the property owner that state there is no loitering. The landowner empowers someone in the shopping center, usually a manager or tenant, to evoke it. Mr. De Schmidt added that this worked well at his restaurant.

Chair Nitaфан opened the public hearing on Agenda Item No. 4.

**2. USE PERMIT NO. P-UP2003-33:** *A request to operate a computer learning center/arcade at 1319 Jacklin Road. Applicant: Hermilo Isla & Edgar Rondez.*

Mr. Lindsay presented Use Permit No. P-UP2003-33, a request to operate a computer learning center/arcade without providing three (3) required parking spaces at 1319 Jacklin Road, zoned C1-Neighborhood Commercial district. He explained that the zoning code doesn't have an exact description of a computer-learning center or Internet café, so staff has been using a section of the ordinance that refers to a coin operated arcade. Staff is recommending approval with conditions.

Commissioner Giordano noted that the shopping center is commercial with professional offices and when she saw the word “arcade”, it immediately brought up a red flag. She didn’t think the use would mix well with those establishments there now and is also concerned with what kind of noise level is generated with this type of use. She felt that staff may want to look at the ordinance to change and allow for this type of use since it probably will be something that staff is going to see more of in the future.

Commissioner Hay asked what is the ratio of parking for this type of business. Mr. Lindsay replied that staff has taken the direction of the Planning Commission and has used three parking spaces per station.

Commissioner Hay asked if staff is changing the ratio and Mr. Lindsay replied, “No”, staff has been consistent and there is nothing unique about the application.

Vice Chair Williams asked staff if they have observed what type of clientele would be utilizing the service. Mr. Lindsay replied that staff has not made any observations of clientele. In regards to parking, Mr. Lindsay noted that as applicants continue to come in for this type of use, surveying the parking lot would help to revise future applications.

Chair Nitafan commented that the word “arcade” triggers him to think of an arcade like Dave and Busters that is so full of noise. He asked if the establishment would be providing food.

Mr. Lindsay replied that there would be very little noise generated from gaming because it is done on computers and the customers wear headphones. This facility is different then walking through a regular coin operated arcade. He added that some internet cafes provide snacks, but it doesn’t seem that the applicant will be providing food sales. If the applicant wanted, clearly they could put in a vending machine. He added that the applicant would be having retail sales of computer software.

Chair Nitafan opened the public hearing.

**Hermilo Isla, Applicant of Mission Control**, explained that the business is a computer-learning center, and the clientele ranges from age 4 to 100. The goal is to encourage children and to educate them on how to increase their knowledge on the computer and learning how to use the latest operating system and keyboard. Mr. Isla explained that there will be no speakers in the room, and it will be quiet as far as headphone use. The program that will be used is a reading comprehension program called IQ, which flashes one sentence on screen and gets faster and faster using video graphics. The idea is to improve the reading comprehension of students. Mr. Isla, who worked with Verisoft for 8 years, used to do administrative training with companies, explained that there would be no more than 30 students.

After Mr. Isla’s explanation, Commissioner Giordano felt that the business would be a right fit for the center. She asked Mr. Isla what he thought about the parking in terms of traffic flow. Mr. Isla commented that he and his partner observed the area from 8 to 12 p.m. and doesn’t see the parking as a problem. He said that there is plenty of parking on the other side where restaurants are not located. He also added that most customers attending do not have a driver’s license.

Commissioner Hay agreed with Commissioner Giordano that the business is a good fit for the shopping center.

**Close Public Hearing**

**Motion** to close the public hearing.

M/S: Hay/Giordano

AYES: 7

NOES: 0

Motion to approve Use Permit No. P-UP2003-33 with special conditions and findings in the staff report. Commissioner Giordano also recommended that staff evaluate this type of use and redesign the parking applicable to this type of use and using different verbiage instead of calling it an arcade.

M/S: Galang/Giordano

AYES: 7

NOES: 0

**IX.  
NEW BUSINESS**

**3. "S" ZONE APPROVAL AMENDMENT NO. P-SA2003-128:** *Request to remove nine (9) protected trees at 1485 Country Club Drive located in the hillside zoning district (APN: 029-03-018). Applicant: Frank Houghton.*

Chair Nitafan opened Agenda Item No. 7 for discussion under New Business.

Mr. Lindsay presented "S" Zone Approval Amendment No. P-SA2003-128, a request to remove nine (9) protected trees at 1485 Country Club Drive located in the hillside zoning district and recommended approval with conditions.

Commissioner Giordano asked if the applicant was going to replace the trees, why did they have to hire a city arborist to inspect the trees since the majority of the trees were dead.

Mr. Lindsay replied that it is a normal process of the tree removal process and the applicant didn't pay for the City Arborist. The City Arborist's job is to visit the trees and make an assessment and sometimes will request that the trees should be removed.

Commissioner Giordano asked if the trees were to be considered alive and not dead, would that road block the process. Mr. Lindsay replied that given the nature of this application, it was approved so it would not have affected staff's decision.

Commissioner Hay asked if the application is being brought forward by staff or by the applicant. Mr. Lindsay explained that before staff could approve the building permit, staff asked the applicant to provide the application they needed for approval to remove the trees. He noted that one thing of value it that the Arborist identified that one of the oak trees was valuable and there is a high probability that it will be saved.

Motion to approve "S" Zone Approval Amendment No. P-SA2003-128 with special conditions and findings noted in the staff report.

M/S: Giordano/Hay

AYES: 7

NOES: 0

Chair Nitafan recognized Commissioner Hay.

Commissioner Hay noted that this would be his last meeting as he goes into retirement of public service. He noted that the Commission has had their ups and downs, and has agreed and disagreed and through it all, the Commission has kept the best interest of Milpitas in the quality of life in the forefront. He applauded and thanked everyone for the opportunity to serve as Chair for four years. He thanked staff, Tambri Heyden, James Lindsay and Kit Faubion, and the Commission. He noted that the City would be enjoying some exciting challenges ahead in the next few years and there will be major projects coming forward to develop the midtown plan. He thanked the citizens of Milpitas for giving him the opportunity to serve as Chair on the Planning Commission for 7 years.

**X.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:10 p.m. to the next regular meeting of November 12, 2003.

Respectfully Submitted,

James Lindsay  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**October 8, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Hay, Lalwani and Sandhu  
Absent: None  
Staff: Heyden, Lindsay and Rodriguez

**III.  
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
September 24, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of September 24, 2003.

There were no changes from staff.

**Motion** to approve the minutes as submitted.

M/S: Giordano/Williams

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

**Commissioner Hay** announced his resignation from the Planning Commission effective November 1<sup>st</sup>. He is making an employment change that will require a substantial commitment of his time. His resignation also includes the City Council Transportation Subcommittee and the Santa Clara County Housing Community Development Citizen Advisory Committee.

Chair Nitafan noted that Commissioner Hay will be very missed and that he has been a very dedicated member of the community and very giving in regards to public service. He also thanked Commissioner Hay for his service to the Planning Commission, City Council, City staff and to all of the citizens of Milpitas and for being instrumental in the various projects that have come to the City within the last ten years and that he is very much appreciated.

**Commissioner Lalwani** echoed the words of Chair Nitafan and added that Commissioner Hay will be missed as a mentor and noted the many times he had helped her and wished him the best. Commissioner Lalwani also noted that she attended the California Chapter of the American Planning Association (APA) conference in Santa Barbara last week and that it was exciting. She brought back literature for fellow Commissioners and commented that the next APA national conference will be held in San Francisco in March 2005. She also thanked the City for letting her attend the conference.

Chair Nitafan added that he attended the conference and was very proud to represent the City of Milpitas. He noted that the City received the 2003 Comprehensive Planning award for a small jurisdiction for the Midtown Specific Plan and thanked the Planning Commission, City Council, staff and citizens for their involvement.

**Vice Chair Williams** noted that it has been fun and a pleasure serving with Commissioner Hay on the Commission and noted that they have worked on many exciting projects. He mentioned his gratitude and appreciation to Commissioner Hay in trying to do the best for the community.

**VI.  
APPROVAL OF  
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

**Motion** to approve the agenda as submitted.

M/S: Hay/Giordano

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 3 and 4**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

**James Lindsay, Acting Planning Manager**, requested that Agenda Item No. 1 (Six Month Review Of Use Permit No. 1532 (P-UA2003-17) be added to the consent calendar since the applicant is requesting continuance to the October 22<sup>nd</sup> meeting to work out some issues.

The Commission agreed to put Agenda Item No. 1 on the consent calendar.

Chair Nitafan opened the public hearing on Consent Item Nos. 1, 3 and 4.

There were no speakers from the audience.

**Keep Public Hearing open  
Item Nos. 1, 3 and 4**

**Motion** to keep the public hearing open and continue consent Item Nos. 1, 3 and 4 to the October 22, 2003 meeting.

M/S: Giordano/Williams

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1, 3 and 4.

**\*1 SIX MONTH REVIEW OF USE PERMIT NO. 1532 (P-UA2003-17):**  
Verification of compliance with all conditions of approval for Use Permit No. 1532 for a cafe (Q-Cup) at 1679 N. Milpitas. Blvd. (APN 22-02-049). Applicant: Ted Chen, Q-Cup. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2191)  
(*Recommendation: Continue to October 22, 2003*)

**\*3 USE PERMIT NO. P-UP2003-33:** A request to operate a computer learning center/arcade at 1319 Jacklin Road, zoned C1-Neighborhood Commercial district (APN: 029-05-040). Applicant: Hermilo Isla & Edgar Rondez. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2346) (*Recommendation: Continue to October 22, 2003* )

**\*4 SIX-MONTH REVIEW OF USE PERMIT AMENDMENT NO. P-UA2002-21:** (*Continued from September 24, 2003*) Verification of compliance with all conditions of approval including maximum number of seats and ensuring trash bins are kept within the existing enclosures at 89 S. Park Victoria Drive (APN: 088-04-048). Applicant: Manuel Montono. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2334) (*Recommendation: Continue to October 22, 2003*)

M/S: Hay/Lalwani

AYES: 7

NOES: 0

## **VIII. PUBLIC HEARINGS**

Chair Nitafan opened the public hearing on Agenda Item No. 2.

**1. USE PERMIT NO. P-UA2002-28 (P-AD2003-11) AND USE PERMIT AMENDMENT NO. P-UA2003-15 AND S-ZONE AMENDMENT (P-SA2003-118):** *Expiration of a temporary use permit and a new request for live entertainment at Manila – Natori Restaurant at 579 South Main Street.*

Mr. Lindsay presented an expiration of a temporary use permit for karaoke and dancing (live entertainment) in a nightclub/ballroom setting at the Manila-Natori Restaurant and a new request to add live entertainment (karaoke and dancing), add 34 seats for special events, construct a new garbage enclosure, and a request for the joint use of 20 parking spaces at an existing restaurant (Manila-Natori Restaurant) at 579 South Main Street. Staff recommends approval with conditions and note receipt and file for expiration of temporary use permit no. P-UA2002-28.

Chair Nitafan opened the public hearing on Agenda Item No. 2.

**Don Peoples, President of Downtown Association and business owner,** is concerned that businesses in downtown are not doing well because of the economy. He stated the applicant's concerns about staff's recommended conditions to improve the existing landscaping and noted that the applicant is not getting cooperation from the landlord. The applicant would just like to complete the trash enclosure. He noted that the applicant has improved the site, and if the Commission holds off on the landscaping condition, it would improve the applicant's financial situation.

### **Close Public Hearing**

**Motion** to close the public hearing.

M/S: Hay/Lalwani

AYES: 7

NOES: 0

**Commissioner Giordano** asked if the landscaping process could be looked at as long term process and if staff could come to some agreement with the applicant. Mr. Lindsay stated that in Condition No. 4, staff is not asking that additional landscaping be installed beyond what was previously approved. The request is to bring the landscaping back to the state that it was originally approved at. It has deteriorated, and staff felt it important to maintain that integrity. He also explained that a similar request was given regarding the garbage enclosure, within Condition No. 7, where staff is recommending a six-month time period for which to construct the garbage enclosure. Staff felt that the landscaping wasn't that expensive and did not require substantial improvements. The Commission could clearly follow the example of Condition No. 7 but it is not staff's recommendation.

Commissioner Giordano asked if staff could give the applicant six months to complete the landscaping and Mr. Lindsay replied that staff is recommending immediate action, but if a longer time frame is desired by the Commission, then it is up to the Commission to decide.

Besides Condition No. 7, Commissioner Lalwani asked if the applicant is in agreement with the other conditions. Mr. Lindsay replied that the previous use permit triggered the midtown upgrades, and that this request does not trigger the same requirements. The two site enhancements were bringing the landscaping back up to the approved drawings and the garbage enclosure. Once the applicant has installed those, then everything would be fine.

**Marie Asistin, owner of Manila Natori**, explained that she did apply as a new applicant, and as far as the landscaping that was approved, she felt that staff has required too many trees to plant. She doesn't agree with staff's recommendation to place a weeping willow tree in the front and the back of the property and asked if a different type of tree could be planted. Mr. Lindsay replied that staff could work with the applicant on the species type and staff was more concerned with the quantity of landscaping that the site does not meet. If there are concerns with the species type, staff will work directly with the applicant and if there are other suggestions, staff will consider a species type.

Chair Nitafan commented that staff could work with the applicant and bring back a revised landscaping plan to the Planning Commission Subcommittee.

Mr. Lindsay commented that if it is the Commissions desire to bring the revisions to the landscaping plan back to the subcommittee, than it has to be added to condition no. 4, however, in working out details with species types, staff is comfortable in handling that with the applicant directly.

Commission Hay supported Mr. Lindsay's comments and doesn't see a need to have the landscaping plan come back to the subcommittee. The species type is a level that staff can handle and has handled in the past.



Commissioner Giordano asked if the landscaping plan was driven by the Midtown plan. Mr. Lindsay replied, "No", and explained that this condition would have been placed on the project if it had been outside of the Midtown area. Staff looked at the file and did a site visit and found that the landscaping that was previously approved was not what it was to be appearing now. The landscaping had been dilapidated and was removed and would not be considered a Midtown requirement.

In response to Commissioner Giordano's question, Mr. Lindsay replied that staff can work with the species type, and if the applicant is requesting a reduction in landscaping, then the project will have to come forward again.

Commissioner Lalwani made a **motion** to approve Use Permit No. P-UA2002-28 (P-AD2003-11) AND USE PERMIT AMENDMENT NO. P-UA2003-15 AND S-ZONE AMENDMENT (P-SA2003-118) and with amended special condition No. 4 to bring back the landscaping plan to the subcommittee for review.

Mr. Lindsay requested to modify the motion to remove Use Permit No. P-UA2002-28 (P-AD2003-11) and stated that it was provided for informational purposes only.

**Commissioner Galang** asked if there is a deadline for condition no. 4 and Mr. Lindsay replied that staff is requesting that the landscaping be completed prior to certificate of occupancy.

Vice Chair Williams asked if the intent was to have a six-month review for landscaping, therefore giving the applicant enough time.

After further discussion, the Commission agreed to revise condition No. 4 to read the following:

4. *Within six (6) months of October 8, 2003, the applicant shall restore the landscaping to the previously approved landscaping plan, ensuring that all of the required trees are on the site and dead landscaping is replaced. All required landscaping shall be continuously maintained as necessary to provide a permanent, attractive and effective appearance.*

The maker of the motion (Commissioner Lalwani), and the second (Commissioner Sandhu) agreed.

Chair Nitafan asked if there are going to be any future problems with joint parking and Mr. Lindsay replied "No".

**Motion** to approve Use Permit Amendment No. P-UA2003-15 and S-Zone Amendment (P-SA2003-118) and with amended special condition No. 4 as noted above.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

## **IX. NEW BUSINESS**

Chair Nitafan opened the public hearing on Agenda Item No. 5. under new business.

**2. DISCUSSION OF THE  
FISCAL YEAR 2003-2004  
CAPITAL  
IMPROVEMENT**

**PROGRAM:** *Staff Contact:  
Acting Planning Manager,  
James Lindsay (408) 586-  
3274 and City Engineer Mike  
McNeely, (408) 586-3301*

Mr. Lindsay explained that at the September 24<sup>th</sup> 2003 meeting, the Commission requested that the Fiscal Year 2003-2004 Capitol Improvement Program August monthly report be agendized. Staff invited **Mike McNeely, City Engineer**, to update the Commission on capital projects.

Mr. McNeely presented a discussion of the Fiscal Year 2003-2004 Capital Improvement Program. Regarding the Montague Expressway widening project, he explained that it is in Phase 3, the final phase of a series of projects. There was a cost sharing agreement with VTA and the City to widen the railroads at the east of Great Mall Parkway, which are the UPRR tracks. He explained that this project would complete the gaps between the railroad and I-680, primarily on the north side and that some areas on the south side still need to be completed. He recalled that Phase 1 was completed at Great Mall Parkways and Phase 2 was just completed on the south side to widen an additional lane.

Regarding the status of right of way affecting the Jones Chemical Property, Mr. McNeely explained that in the original concept, it was assumed that the Jones Chemicals property would be demolished, but so far, Warehouse Properties has no plans to do so. Staff is looking into widening the right of way by providing an additional lane, but cannot extend the right turn lane from Montague to Milpitas Blvd.

Commissioner Hay thought that the cost sharing was between the City and VTA and Mr. McNeely replied that the City paid for the widening on Montague and VTA paid for the widening for light rail near the Great Mall Parkway and Capital Avenue.

Commissioner Lalwani asked what would happen with the vacant buildings at Montague Court at the intersection of 680 and Montague Expressway. Mr. McNeely replied that he does not know.

Commissioner Giordano asked what is the projected timeline and Mr. McNeely replied that construction is expected to be complete between January and December of 2005 because it will take long to get the utilities under grounded and get the railroad going.

Regarding the Alviso Adobe renovation project, Mr. McNeely brought attention that there is a printing error, which mistakenly did not include the budget of \$1.6 million dollars that is available. Mr. McNeely noted that staff has not been successful in developing an access way and additional parking needed for the project. Staff is still talking to the owner of Calvary church and the owner on the north side of Calaveras and the church has not been amendable to that suggestion. Staff has talked about a parking lot behind their parking lot, and access through the church property. Staff met with the owners last week and unfortunately, the access is key to the adobe. For these reasons, there is no anticipated schedule, but are trying to come up with a solution this year.

Commissioner Lalwani informed that there is a house on Calaveras Road near Evans for sale, which might be available for parking access. Mr. McNeely replied that staff would look into it.

Commissioner Hay mentioned his confusion with the whole negotiation process with the church. He recalled the difficult time the Commission had approving the church and that the City bent over backwards to help them do the things they wanted to do. The church made commitments to provide the City access to the Adobe and it's unfortunate that the Adobe is landlocked because of their housing development.

Mr. McNeely replied that there are a few parking spaces available but not nearly enough.

Commissioner Hay is concerned with the church's change in attitude. He recalled that the church was asking for a lot of flexibility and is disappointed that they are not interested in cooperating.

Commissioner Giordano is concerned about the budget for the Adobe project and asked how long the project has been on hold. Mr. McNeely responded that he wasn't sure, but that he has been involved with the project for a year.

Commissioner Giordano asked why is there no money being allocated for this project and Mr. McNeely responded that the project has been put on hold but that there is \$1.6 million available for the project, there was a typo in the report.

Commissioner Giordano asked if the Commission would like to address this issue further. Mr. McNeely replied that the Parks Recreation and Cultural Resources Commission (PRCRC) is interested in looking at it and their recommendation is to form a study group to approach the church.

**Commissioner Sandhu** asked if the dispute with the historical society and the city regarding money with the project has been resolved. Mr. McNeely said that it has not been resolved, but the discussions have been on hold pending the resolution for the Adobe. He also mentioned that the Council would be reviewing the Capital Improvement Project (CIP) reports in their entirety at the next meeting.

Going back to the issue of the church and what occurred in the past, Commissioner Hay suggested that staff schedule a review at the Planning Commission level to look at the history of when the City came into possession of the Alviso Adobe, and to look at previous minutes and videotapes. He recalled how the church was looking for flexibility and how they played a heavy political game and were successful.

Commissioner Lalwani pointed out to Mr. McNeely that she found the address of the Montague Court buildings rented by South Bay Development Company and showed the pictures to Mr. McNeely.

Vice Chair Williams commented on the Geographic Information System (GIS) project and was hoping that he would see the project completed. Mr. McNeely was happy to report that staff is nearing the end of the tunnel and hoping to have it completed by January 2004. The next phase of the project includes utilities such as water, sewer, storm drain and streetlights.

Commissioner Hay commented that the monthly CIP reports are a valuable tool.

Regarding the uncommitted balance of \$36,000 dollars for the dog park project Commissioner Hay asked if the money could be used to purchase benches. Mr. McNeely said that staff would consider it.

Regarding the hillside water system improvements, Commissioner Hay asked if the hillside owners will share the \$2.2 million dollars of the total project budget cost. Mr. McNeely replied that it has been a long city policy that the costs will be spread over by the entire city.

Regarding the manor storm pump station backup generator negative uncommitted balance of \$31,750 dollars, Commissioner Hay asked if the City has overspent the budget. Mr. McNeely replied that there is plenty of money for the project and staff will correct the error in the report.

Regarding the Milpitas Sports Center negative uncommitted balance of \$260,844 dollars, Commissioner Hay asked if the City has overspent the budget. Mr. McNeely replied that there is plenty of money for the project and staff will correct the error in the report.

Regarding the Calaveras road slope protection project, Commissioner Hay asked what does staff plan on doing to mitigate problems in case there is a landslide in the future. Mr. McNeely replied that staff is attempting to sell the material through various vendors and has not been successful. As far as movement goes, the materials have been removed due to safety factors and the probability of the road sliding is very small, but there are no guarantees.

Commissioner Hay commented that he is very excited and proud of the City to see that the utility under grounding project has stepped forward quickly. It is a big part of the investment and infrastructure of the Midtown area near Main and Weller.

Chair Nitafo commented that the Montague widening project at Milpitas Blvd. shows 100 percent complete, but there is money left over. He asked if that money would be used for landscaping. Mr. McNeely replied, "Yes", and that the City is looking at agreements with San Jose.

In regards to Chair Nitafo's question regarding the Milpitas library, Mr. McNeely responded that staff is still in the pre-design phase and the developer is working on a work plan. He explained that there are several hundred thousand dollars for the mapping project and the under grounding the utilities.

In regards to the Community Center renovation project, Chair Nitafo commented that when looking at the roof of the Community Center from City Hall's second floor, you could see mechanical equipment on the roof, which makes it look awful. He asked if staff could clean up the mess. Mr. McNeely replied that staff will look into it, but they are working on the HVAC system, which has been long needed.

## **X. ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:07 p.m. to the next regular meeting of October 22, 2003.

Respectfully Submitted,

James Lindsay  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**September 24, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Hay, Lalwani and Sandhu  
Absent: None  
Staff: Heyden, Lindsay and Rodriguez

**III.  
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
September 10, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of September 10, 2003.

There were no changes from staff.

**Motion** to approve the minutes as submitted.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

**James Lindsay, Acting Planning Manager**, announced that the Planning Commissioners will use electronic voting for public hearing items that are not on consent. He also noted that there will be "A Celebration of Milpitas Art in 2003" event on October 4<sup>th</sup> from 10 a.m. to 2 p.m. at the Milpitas Civic Center Plaza and admission is free. Also, volunteers are requested for the International walk to school day on Wednesday, October 8<sup>th</sup>.

Mr. Lindsay went on to say that a Town Hall meeting hosted by the CAC will be held on October 9<sup>th</sup> and topics include occupancy concerns for single-family homes and the Neighborhood Beautification Ordinance. Mr. Lindsay also noted that from October through December, Commissioner Hay and Chair Nitafan are regular members of the Planning Commission Subcommittee, and Vice Chair Williams is the alternate.

**Commissioner Lalwani** announced that Mayor Esteves father, Pastor Esteves, passed away last week and that services will be held on September 25<sup>th</sup> at 10 a.m. at St. Johns Church in Milpitas.

**Commissioner Giordano** asked if the Commission could adjourn the meeting in memory of Jon Minnis, a prominent businessman that made a great contribution to the City, who passed away last week.

On behalf of the Knights of Columbus, Chair Nitafan announced that there will be a drive to collect money for people with mental retardation from October 17<sup>th</sup> through October 19<sup>th</sup>, and encouraged everyone to be generous. All of the collected donations will be distributed to the local people in Milpitas and also to special education students at Milpitas High School.

## **VI. APPROVAL OF AGENDA**

Chair Nitafan called for approval of the agenda.

Mr. Lindsay noted the change to Agenda Item No. 1 ("S" Zone Amendment No. P-SA2002-111) and changed the permit title to read P-SA2003-111.

**Commissioner Hay** noted that the Fiscal Year 2003-2004 August monthly report was included in the Commissioners packet, and requested that this be agendized at the meeting under New Business.

Commissioner Giordano noted that appropriate staff members might not be available to respond to the questions and suggested agendizing the report to the October 8<sup>th</sup> meeting. Mr. Lindsay commented that he is available to respond to questions, and that if he doesn't have the answer, he could bring it back to the next meeting.

After further discussion, staff and the commission agreed to agendize the report to the next meeting.

**Motion** to approve the agenda and to agendize the FY 2003-2004 Capital Improvement Plan to the October 8, 2003 meeting.

M/S: Hay/Giordano

AYES: 7

NOES: 0

## **VII. CONSENT CALENDAR Item Nos. 3, 4, 5, 6, 7 and 8**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay noted that Agenda Item No. 5 (Use Permit Amendment No. P-UA2003-14) does not reference the "S" Zone Approval Amendment discussed in the staff report. Therefore action taken will only be on the Use Permit. Mr. Lindsay also noted that for Agenda Item No. 7 (Administrative Permit No. P-AD2003-14; C.3 Stormwater Guidebook), the Commission received a memo that struck out some language from the C.3 Guidebook.

In regards to Agenda Item No. 5, Chair Nitafan asked if the "S" Zone Approval Amendment could be approved at staff level. Mr. Lindsay replied that it could be approved at staff level and noted that the information was also discussed in the staff report.

**Vice Chair Williams** suggested that Agenda Item No. 2 (Use Permit Amendment No. P-UA2003-18), be added to the consent calendar, since staff is on top of the six month review, and if there are any problems, the issues will come back in another six months.

Commissioner Giordano noted there is a letter from the applicant contesting the six-month review.

Regarding the construction of the enclosure, Mr. Lindsay commented that the situation between the landlord and the tenant seems to be progressing and that hopefully, the enclosure will be completed soon.

**Mike Lee, Owner of Anh Hong Saigon**, noted that since the landlord has committed to building the enclosure, he asked if he could be excluded from the six month review.

Commissioner Hay noted that the applicant is not in concurrence with staff and felt that the Item should be left off of consent.

Vice Chair Williams withdrew his previous request.

Chair Nitafan opened the public hearing on Consent Item Nos. 3, 4, 5 and 6.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 3, 4 and 5**

**Motion** to close the public hearing on Consent Item Nos. 3, 4 and 5 and continue Item No. 6 to October 8, 2003 meeting.

M/S: Hay/Galang

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 3, 4, 5, 6, 7 and 8, and to include the amended changes to Agenda Item Nos. 5 and 7.

**\*3 USE PERMIT AMENDMENT NO. P-UA2003-16:** Request to expand an existing grocery store (Manila Oriental Market) to 2,850 square feet and add 20 seats without providing six (6) required parking spaces at 179 W. Calaveras Blvd. (APN: 22-25-041) located in the (C2) General Commercial zoning district.

**\*4 USE PERMIT NO. P-UP2003-32:** A request to locate a 13-station internet cafe at 142 West Calaveras Boulevard (APN: 022-24-037) in the General Commercial (C-2) zoning district.

**\*5 USE PERMIT AMENDMENT NO. P-UA2003-14:** A request to expand the Banana Leaf restaurant into an adjacent 1,100 square foot tenant space, increase indoor seating from 104 to 168 seats and outdoor seating from 30 to 47 seats without adding providing seventeen (17) required parking spaces. The restaurant is located at 182 Ranch Drive-zoned C2, General Commercial (APN: 022-54-011).

**\*6 SIX-MONTH REVIEW OF USE PERMIT AMENDMENT NO. P-UA2002-21:** Verification of compliance with all conditions of approval including maximum number of seats and ensuring trash bins are kept within the existing enclosures at 89 S. Park Victoria Drive (APN: 088-04-048). (Continued to October 8<sup>th</sup>)

**\*7 ADMINISTRATIVE PERMIT NO. P-AD2003-14 (C.3 STORMWATER GUIDEBOOK):** Approve Planning Commission Resolution No. 494 to adopt the City of Milpitas C3 Stormwater Guidebook to implement and apply the new C.3 urban runoff requirements to all relevant developments.



**\*8 ADMINISTRATIVE PERMIT NO. P-AD2003-15:** Request to allow after-market automotive part sales in the Highway Services (HS) zoning district located at 1503 North Milpitas Boulevard (APN: 022-02-045).

M/S: Hay/Giordano

AYES: 7

NOES: 0

## **VIII. PUBLIC HEARINGS**

Chair Nitafan opened the public hearing on Agenda Item No. 1.

**1. “S” ZONE  
AMENDMENT NO. P-  
SA2002-111:** Request to  
waive the roof equipment  
screening requirement, and  
review of revised landscape  
plan, at 167 S. Main Street.  
*Applicant: Ola Hassan.  
Project*

**Tambri Heyden, Acting Planning Neighborhood Services Director**, presented a request to waive the roof equipment screening requirement, and review of landscape plan at 167 South Main street. Ms. Heyden noted that the temporary certificate of occupancy expires on October 18<sup>th</sup>, and that the applicant wants modifications and relief from some of the conditions. She noted that the project site is a cultural resource and that the Parks, Recreation, and Cultural Resources Commission (PRCRC), which approved to waive the screening requirement, reviewed the application.

Ms. Heyden recommended to the City Council approval with conditions for the waiver of the roof equipment screening requirement on the restaurant building, and approval of the revised landscape plan and revised screening requirements for their ground mounted A/C equipment screening with conditions based on the findings and special conditions noted in the staff report.

In regards to page 4 of the staff report, **Commissioner Galang** asked what “CMU” stands for. Ms. Heyden responded that “CMU” is an abbreviation for concrete masonry unit, or concrete block.

Commissioner Giordano asked why do certain projects go to the PRCRC and Ms. Heyden replied that it is a requirement from the Municipal Code.

Commissioner Giordano commented that the landscape plan should have been reviewed by the PRCRC. Mr. Lindsay noted that a city Cultural Resource can be a designated site or building. Modifications to a site of a designated building are not reviewed by the PRCRC. When a site designation is involved, then the PRCRC would have the authority to review site modifications such as landscaping.

Ms. Heyden added that if existing landscaping was listed as a cultural resource, then it would go to the PRCRC for review.

Commissioner Giordano asked what gives the PRCRC the ability to review building modifications. Ms. Heyden commented that the Municipal code reads that the PRCRC looks at modifications to buildings that are listed on the register of Cultural Resources.

In response to Chair Nitafan’s question regarding the grading plan, Ms. Heyden commented that the grading plan was submitted as part of the building permit (which was issued), and that the parking lot was constructed as per the building permit.

Chair Nitafan wants to ensure that the grading system doesn't flow into the adjacent property and Ms. Heyden replied that the grading would be evaluated with the development of the next parcel.

Commissioner Galang noted the two different projects at 167 and 187 Main Street and asked about the screening of the roof top equipment at 187 Main Street. Ms. Heyden explained that these two projects were approved as a package and staff is tying the loose ends of these two projects as one.

Commissioner Galang asked if 187 Main Street requires a Use Permit. Ms. Heyden explained that this project was included for documentation purposes, and that the roof top screening has been an unsatisfied condition of the coffee shop for a long time. Staff included this as part of the staff report so that the applicant knows he has to complete the screening at 187 Main Street to obtain a permanent certificate of occupancy.

Chair Nitafan invited the applicant to speak.

**Ola Hassan, Applicant and Owner of 167 and 187 South Main Street**, shared his frustration about his project that has been going on for the past 9 years. He felt that there has been much improvement in the Planning Department since Ms. Heyden came on board. He explained that all of the conditions staff is proposing were not part of the original approval. He complained that he has been cooperating with staff, and it seems that the City makes all of the decisions without consulting him first.

Mr. Hassan recalled that in 1998, he brought forward a landscaping plan to the Commission and it was agreed that a palm tree would be planted. He noted that the palm tree cost him \$3,500 dollars. He brought forward another revised landscaping plan and took it to the PRCRC and it was approved. He felt that it is very upsetting to go back and forth with staff and felt frustrated because it is costing him time and money.

In regards to the screening, he felt that this shouldn't be an issue. Mr. Hassan agrees with the condition to waive the roof equipment screening requirement but doesn't agree with the proposed landscaping plan from staff.

In regards to the screening for the ground mounted A/C unit, Mr. Hassan doesn't agree with staff to build a solid wall around the unit because ventilation is needed. Mr. Hassan would like to continue to work with staff to come up with a better plan because he is not able to afford all of these expensive costs to make improvements.

Commissioner Lalwani shares empathy with Mr. Hassan and asked him if staff gave him reasoning for the landscaping plan and the solid wall around the A/C unit. Mr. Hassan replied that staff recommended a solid wall but he used bamboo to screen the A/C unit and explained that the bamboo could last for twenty-five years.

Commissioner Lalwani asked what staff felt about the bamboo and Mr. Hassan replied that the bamboo should be able to work since it screens the A/C from the public.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

## Close Public Hearing

**Motion** to close public hearing.

M/S: Hay/Lalwani

AYES: 7

NOES: 0

Commissioner Lalwani recalled that there was a similar situation with the Jain Temple, in which the applicant was asked to screen the roof top and the A/C unit and that the applicant was told they could screen it using the same color of the building. She asked if that same situation could be applied to the solid wall. Ms. Heyden explained that those were two separate issues. With the Jain Temple, the issue was the roof screening and with Ola's restaurant, it is screening for a ground mounted A/C unit that is visible from Serra Way.

Ms. Heyden asked the Commission to refer to the photos in their package that show the unit, which is about 3 feet high, 7 feet long and 3 feet deep. Ms. Heyden explained that when she met with the applicant, staff did a site inspection of the wrought iron fence and felt it was not acceptable. The following day, Mr. Hassan installed the bamboo, and when staff looked at the bamboo, the screening was not complimentary to the building. Ms. Heyden explained that staff is looking for something that is the same color and texture as the building. Regarding the ventilation, she suggested that the top of the solid wall could be open and vents could be inserted.

Commissioner Lalwani empathized with Mr. Hassan about the cost of the palm tree and asked if there are cheaper trees he could buy. Ms. Heyden explained that staff is not requesting palm trees to be planted, and that the only trees Mr. Hassan has is a palm tree. She went on to explain that staff is looking for an introduction of a different kind of tree that provides shade such as deciduous trees.

Ms. Heyden recalled that when this project was approved by the Planning Commission, a landscape plan was submitted but it was very minimal in terms of quantity of materials, and the condition that was approved was that additional landscape be provided and the landscape plan go back to the Planning Commission. Between that time and now, the landscape was never approved by the City. Staff has been trying to work with Mr. Hassan to take what he has already planted, and adapt it to meet staff's objectives. Staff has already accepted the palm trees by recognizing his exotic Caribbean theme.

Due to the applicant's financial constraints and dissatisfaction, Commissioner Lalwani asked if the landscaping plan and the screening for the A/C unit could be postponed so that it can be worked out between the applicant and staff.

Ms. Heyden explained that staff has been working very hard with Mr. Hassan for him to meet his October 18<sup>th</sup> temporary certificate of occupancy deadline. She explained that if he doesn't comply with the conditions by then, he has to shut down his operation.

Mr. Hassan commented that there wasn't anything on the west planter in 1996, and that when he came forward to the Planning Commission back then, the Chairman at that time asked him what he was going to do about landscaping, since there is no place to put landscaping there. Mr. Hassan said that it is his vision to make the restaurant look nice for the city and the community, but on the west side, there is nothing but concrete and you can't plant anything there. He felt that staff should be realistic and talk to him instead of just sending out inspectors to the restaurant without notifying him.

Chair Nitafan explained to Mr. Hassan that he had his chance to speak and now it is time to hear questions and concerns from the Commission.

Vice Chair Williams asked if staff ever discussed the possibility of using vinyl coated cyclone fence with appropriate color slats attached to the railing on the inside of the wrought iron fence, thereby providing a visual screening and adequate air circulation for the equipment. Ms. Heyden replied that vinyl slats were not considered by staff to be aesthetically pleasing, since the property is at the heart of Midtown and vinyl slats are used in industrial areas.

Vice Chair Williams mentioned his concerns about using a solid wall to screen the A/C unit since transients could hide there or throw trash behind the wall.

Commissioner Hay felt that staff made the right decision about waiving the roof equipment screening requirement. He recalled that when he saw the framing around the building, he tried to envision it and felt that the material would be too bulky and would detract from the historical nature of the building. Regarding screening of the A/C unit, he is aware of the requirements that the screening should be consistent with the building, and felt that the bamboo is out of place and detracts from the building. He reiterated that the restaurant is one of the major entrances to the midtown area.

Commissioner Hay mentioned the applicant's concerns about the planting on the western side of the property that is back against the vacant lot, and is concerned about what type of use would be built there in the future. He expects that that part of Midtown is zoned mixed use high density and would expect that something would go into that area for development. He asked staff if that has been taken into consideration for the landscaping plan. Ms. Heyden replied, "Yes", and that this property has a higher percentage of impervious areas, so the landscape area should be well designed

Chair Nitafan commented that landscaping might not be necessary on the western side if a building will be there in the future.

Ms. Heyden commented that it is more important to put landscaping on the western side, given the different variables of how that side could be laid out. She explained that the landscaping could be adjacent to a parking lot, another landscape area or even a building. There is so little landscaping to take advantage of so staff felt it to be critical.

As Commissioner Giordano listens to staff, the applicant and comments, she concurs with Commissioner Hay to not put the screening on the roof top equipment. She felt that the PRCRC should review modifications to the building, and would like them to review the ground mounted A/C equipment and the landscape plan due to the uniqueness of the property and its historical significance. Regarding the screening of the roof top equipment of the coffee shop, she felt that it should be addressed as a separate application.

Vice Chair Williams appreciated Commissioner Giordano's concerns to bring in the PRCRC to review the site modifications, but mentioned staffs concerns about a time limit for the temporary certificate of occupancy. He felt that bringing this project to another Commission that is not chartered to look at the landscaping would put the project in jeopardy.

Commissioner Hay agreed with Vice Chair Williams about moving forward to help Mr. Hassan meet his deadline, although, there is some question about whether the screening for the roof top at 187 South Main Street is part of this application. Ms. Heyden explained that there are two separate use permits for the restaurant and the coffee shop. She explained that the screening for the coffee shop was added to the staff report so that Mr. Hassan is aware of the condition.

Commissioner Hay asked if the conditions for the coffee shop have been met and Ms. Heyden replied that everything has been done except for the screening requirement.

**Commissioner Sandhu** agrees that the project needs to move forward and felt that the A/C unit screening is critical and staff should find material compatible for the building so it looks beautiful to everybody.

Ms. Heyden commented that instead of using the word "solid wall" in Condition No. 3, staff could revise the condition by saying "A CMU wall that is painted to match the color of the building, that meets ventilation requirements". She explained that the wall could be concrete but could have ventilation.

Commissioner Giordano explained her concerns that the Commission gives extensions all the time and doesn't see what the problem is with giving Mr. Hassan an extension, due to the uniqueness of the building. She felt that it is something that could be worked out at another level, not necessarily prolonging the project.

Chair Nitafan agreed to waive the roof top screening and felt that the screening for the A/C unit is give and take. He commented that staff recommends a lesser, massive type of wall that would cost less. He also mentioned that if there is a problem with the landscaping plan, maybe the applicant and staff could work it out and bring the landscaping plan back to the Planning Commission Subcommittee.

Ms. Heyden commented that in order to keep the project on track, it has been scheduled for City Council review on October 7<sup>th</sup>.

Vice Chair Williams asked if it is possible for the Subcommittee to meet at a special time besides the scheduled meetings and Ms. Heyden replied, "Yes".

Mr. Hassan complained that the landscaping plan shouldn't have come down to this moment, since he has submitted four plans to staff the past year. He felt that staff is very close to coming up with a solution.

Commissioner Lalwani recommended that staff remove the word "solid" from Condition No. 3, so that it allows the applicant to get creative with the screening requirements for his A/C unit.

Commissioner Galang commented that Mr. Hassan knows the A/C unit and the landscaping plan has to be complete but would support a 3 month extension for the applicant.

Commissioner Hay made a **Motion** for Part 1: To recommend to the City Council approval with conditions of waiver of roof equipment screening requirement and Part 2: Bring back the landscape plan to the Planning Commission subcommittee for approval and approval of ground-mounted A/C equipment screening with amended Condition No. 3 that reads as follows:

3. *Prior to the expiration of the temporary Certificate of Occupancy (October 18, 2003), the applicant shall replace the wrought iron fence on the north side of the building with a solid wall, CMU, masonry or a louvered screen to meet ventilation requirements, the same height as the equipment to screen the two ground-mounted A/C units and it shall be painted to match the building to the approval of the Planning staff.*

Commissioner Giordano asked if the roof top screening requirement for the coffee shop is included as part of the motion. Ms. Heyden commented that it should be removed from the motion.

Commissioner Hay commented that it is not part of the motion but it is still a requirement.

Mr. Hassan interrupted and said that when he started construction, the screening was not a requirement.

Commissioner Hay noted to Chair Nitafan that Mr. Hassan was out of order and that it is not a matter of debate for him anymore.

Commissioner Giordano commented that four plans have already been submitted to staff and felt that they were having difficulty making a joint decision. She felt that input from the PRCRC would shed some light on the plan, and would agree to a 3 month extension. She doesn't hold hope for a plan to come back to Subcommittee level and felt that staff and the applicant were not close to coming to a resolution.

Commissioner Lalwani asked if staff is removing the words "solid wall" from Condition No. 3. Ms. Heyden replied that the words "solid wall" need to be kept to have proof that a solid screening will meet ventilation requirements, if not, CMU or masonry of some type will be allowed for ventilation.

Commissioner Hay asked if the way the motion was stated, does it provide staff flexibility. He felt that the words "solid wall" does not provide staff the flexibility.

After further clarification from staff, Commissioner Hay amended the motion and condition no. 3 was modified to read the following:

3. *Prior to the expiration of the temporary Certificate of Occupancy (October 18, 2003), the applicant shall replace the wrought iron fence on the north side of the building with a solid wall, CMU, masonry or a louvered screen, the same height as the equipment to screen the two ground-mounted A/C units and it shall be painted to match the building to the approval of the Planning staff. If a solid type of screen does not meet ventilation requirements, an open type of CMU or masonry screen shall be provided.*

Part 1: **Motion** to recommend to the City Council approval with conditions of waiver of roof equipment screening requirement.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

Part 2: **Motion** to bring back the landscape plan to the Planning Commission Subcommittee for approval and approval of ground-mounted A/C equipment screening with amended Condition No. 3 as stated above, based on the Findings and Special Conditions of Approval noted in the staff report.

M/S: Hay/Sandhu

AYES: 6

NOES: 1 (Giordano – For reasons stated above)

**2. USE PERMIT AMENDMENT NO. P-UA2003-18:**

Second 6-month review for Anh Hong Saigon Restaurant to verify compliance with special conditions of approval associated with Use Permit Amendment No. P-UA2002-9. *Applicant: Anh Hong Saigon Restaurant.*

Chair Nitafan opened the public hearing on Agenda Item No. 2.

**James Lindsay, Acting Planning Manager**, presented a second 6-month review for Anh Hong Saigon Restaurant to verify compliance with special conditions of approval. He noted that a garbage enclosure was recommended as a special condition, and that it is critical to the operation of the restaurant. Staff felt that an additional six month review is being recommended to provide an extra level of security that the trash enclosure will be built for the restaurant.

Chair Nitafan invited the applicant to speak.

**Mike Lee, Applicant and Owner of the restaurant**, commented that he has no problem to extend the review for another six months. He expressed his frustration that this is his third time coming to the Planning Commission and explained that his original request was for an increase in seating, and that the condition for the trash enclosure was placed as part of the application. There were other items that were required that he has completed, but he has been having a rough time working with the landlord to have the trash enclosure built.

Mr. Lee informed that him, Troy Fujimoto, Acting Associate Planner, and other restaurant owners met with the landlord and that the landlord committed to building the trash enclosure. He felt that since the landlord has made a commitment, he should be excluded from the six month review, and that staff should deal with the landlord directly.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing**

**Motion** to close the public hearing.

M/S: Sandhu/Lalwani

AYES: 7

NOES: 0

Vice Chair Williams commented that in the number of years on the Commission, he has dealt with other projects that are part of the complex, from Mr. Chau's to the Thai restaurant, and there have always been issues with the property owner. He felt that it is unfair to hang the condition with the applicant, and is concerned with the same consistent issue with the property owner. The property owner has to perform the work, but the applicant is at the mercy of the property owner to resolve the issue. He is concerned with what the applicant is going through and asked staff how they can help out the applicant, even though he is being held responsible.

Mr. Lindsay noted that the property owner is constructing the garbage enclosure and that this condition affects a number of tenants. The applicants are seeking entitlements from the city and it is the applicants that are generating the waste that are needed to be disposed. He noted that the applicants play an important role to make sure that the condition gets met.



In regards to the ability to get commitments from the property owner, Mr. Lindsay commented that staff is working with the property owner to continue to get this to compliance. Staff will state to the property owner that having them appear before the Commission for future applications would be a valuable asset to them for continued business operations to the City.

Mr. Lindsay felt that the relationship between staff, the tenants and property owner is developing slowly. He explained that another alternative is that staff will not accept new applications for the facility until the issues are taken care of. That is another tact that is available for staff to use because of lack of compliance. He went on to say that for the next application that comes in, staff would do everything possible to have the property owner come forward with the tenant to address the issues.

Mr. Lee commented that gathering all of the tenants to meet seemed to work with the landlord and suggested that staff move along that line so that the landlord will feel compelled to show up.

In response to Chair Nitafan's concerns about a meeting, Mr. Lindsay commented that the meeting did occur and compliance took longer than expected. Staff will continue to make sure that this permit is moved along in a reasonable timeframe to get the enclosure built. He explained that the landlord has submitted an application and plans and staff will bring the parties together again if action has not been taken.

Commissioner Hay commented that absent a Use Permit application, there is really nothing to motivate the property owner to do the things that have been suggested. Even if they made a commitment, it doesn't mean anything. He felt that staff is on the right approach and if it doesn't resolve itself through this particular process, staff should seriously consider advising the property owner that no further applications would be accepted until this matter is addressed so that a future applicant doesn't spend time and money to open up a new business, and then find out that they have a problem with the landlord that is going to impact their application.

Commissioner Lalwani recalled that the Tofu House applicants had a similar problem with the landlord and asked if the City has any legal recourse against landlords that are not complying.

Mr. Lindsay commented that the responsibility is on the applicant to have the construction done. He went on to say that if the site was out of compliance with an approved site plan or if the trash enclosure was part of the approved site plan, then the City could issue a citation to the landlord. He commented that the number of new restaurant tenants at this center is creating a demand to have the enclosure built.

Mr. Lee shared his frustration that every time a review comes up, he has to pay for staffs time to write a reports and he also has to pay for mailing public notices. He asked if the Commission could waive his fees.

Commissioner Giordano noted if the public hearing is kept open, then Mr. Lee does not have to readvertise. Mr. Lindsay confirmed that that is correct.

**Motion** to reopen the public hearing and extend the six-month review for another six months.

M/S: Hay/Giordano

AYES: 7

NOES: 0

**IX.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:48 p.m. to the next regular meeting of October 8, 2003 in memory and dedication of Jon Minnis.

Respectfully Submitted,

James Lindsay  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**September 10, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

Chair Nitafan dedicated the meeting in honor of those who gave their lives on the September 11, 2001 tragedy.

**II.  
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Hay, Lalwani and Sandhu

Absent: None

Staff: Faubion, Fujimoto Heyden, Khaila, Lindsay, McNeely, Rodriguez

**III.  
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF  
MINUTES**

August 27, 2003

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of August 27, 2003.

**Motion** to approve the minutes as submitted.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

**V.  
ANNOUNCE-  
MENTS**

**James Lindsay, Acting Planning Manager**, announced that the City will be holding a commemorative ceremony for the September 11, 2001 tragedy at the Milpitas Civic Center Plaza at 7:30 p.m.

**Commissioner Lalwani** announced that she attended a Valley Transportation Agency (VTA) meeting at the City Hall committee room discussing minimum operating system requirements for BART and noted there will be a public meeting at the September 16, 2003 City Council meeting.

Commissioner Lalwani also announced she is organizing a community forum in conjunction with the San Jose Mercury news and the Santa Clara County Library to discuss the impact of September 11th and the Patriot Act on September 14, 2003 at noon at the India Community Center.

On behalf of the Sikh Foundation **Commissioner Sandhu** thanked the many people who attended the Milpitas Cultural night at the Community Center on August 30, 2003.

**Vice Chair Williams** commended Commissioner Sandhu for his hard work and dedication and said he left the cultural event with a great deal of insight and appreciation of cultures.

**VI.  
APPROVAL OF  
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

**Motion** to approve the agenda as submitted.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

**VII.  
CONSENT  
CALENDAR  
Item Nos. 3 and 4**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item Nos. 3 and 4.

There were no speakers from the audience.

**Close Public  
Hearing  
Item No. 3 only**

**Motion** to close the public hearing on Consent Item No. 3 and continue Consent Item No. 4 to the September 24, 2003 meeting.

M/S: Hay/Giordano

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 3 and 4.

**\*3 USE PERMIT NO. P-UP2003-29:** Request for a new, 48-seat restaurant (Hai Noodle) without providing seven (7) required parking spaces at 275 West Calaveras Boulevard, zoned C2 - General Commercial district (APN: 022-25-042) Applicant: Hai Ho. Project Planner: Staci Pereira, 586-3278. (PJ # 2336) *(Recommendation: Approval with Conditions)*

**\*4 SIX MONTH REVIEW OF USE PERMIT AMENDMENT NO. P-UA2002-21:** Verification of compliance with all conditions of approval including maximum number of seats and ensuring trash bins are kept within the existing enclosures at 89 S. Park Victoria Drive, zoned C1 - Neighborhood Commercial district (APN: 88-04-048). Applicant: Big Boyz BBQ. Project Planner: Staci Pereira, 586-3278. (PJ #2334) *(Recommendation: Continue to September 24, 2003)*

M/S: Hay/Giordano

AYES: 7

NOES: 0

**VIII.  
PUBLIC  
HEARINGS**

Chair Nitafan opened the public hearing on Agenda Item No. 1.

**1. VARIANCE NO.  
P-VA2003-2 AND  
“S” ZONE  
AMENDMENT  
NO. P-SA2003-61:**

A request to exceed the maximum allowed impervious surface coverage at 510 Vista Spring Court. *Applicant: Franklin and Celina Camillo.*

**James Lindsay, Acting Planning Manager**, presented a request to exceed the maximum allowed impervious surface coverage in order to accommodate wood decking and other back yard amenities for the single-family hillside residence located at 510 Vista Spring Court, continued from the August 27, 2003 meeting.

He explained that the applicant is requesting a variance to deduct the entire driveway, totaling 6,520 square feet, and would like to retain all of the amenities that have been added to this site, and add a 545 square feet pool to be constructed at a later date.

Mr. Lindsay noted that the staff recommends deducting 1,012 square feet of extraneous area from the driveway, totaling 3,230 square feet. Based on the findings and conditions in the staff report, Mr. Lindsay recommended approval with conditions to City Council.

In response to **Commissioner Hay’s** clarifying question regarding a chart in the staff report, Mr. Lindsay explained that the chart is an existing condition chart which states the project site has 14,370 total impervious surface.

Commissioner Hay mentioned his confusion on all of the three charts, and asked staff to clarify. Mr. Lindsay explained that staff provided three options. The first option is staff’s recommendation, the 2<sup>nd</sup> option is an alternative scenario, and the third option is the applicant’s recommendation. Mr. Lindsay summarized that staff is recommending option one, which is to exclude the extraneous driveway areas. The chart shows the resulting impact on the impervious surface coverage. Staff is also recommending allowing the applicant to keep 50% of their amenities, and remove 1,012 square feet of impervious surface area.

Commissioner Hay asked how the 1<sup>st</sup> and 3<sup>rd</sup> option relate to the 2<sup>nd</sup> chart. Mr. Lindsay clarified that there is no relationship to the 2<sup>nd</sup> chart. Staff provided two alternatives and the applicant would like the Commission to approve the 3<sup>rd</sup> option which is to deduct the entire driveway width.

Commissioner Hay suggested that the charts be identified as 1, 2 and 3. Alternative 1 is to keep 50% of the amenities, alternative 2 is to deduct 50% of the driveway width, and alternative 3 is to deduct the entire driveway.

Chair Nitafan asked if all of these alternatives are in conformance with the ordinance. Mr. Lindsay replied that staff’s recommendation is the one alternative that is in conformance with the ordinance and staff cannot support alternative 2 and 3.

Chair Nitafan noted that there are 7 lots in Vista Springs Court and asked if they are buildable. Mr. Lindsay replied, “Yes”.

Commissioner Hay asked staff if the applicant were to put in a 545 square feet pool, would they have to remove 1,557 square feet of amenities. Mr. Lindsay confirmed that staff did not illustrate or show the amenities included with the square footage and the applicant could reduce other amenities to put the pool in. He also explained that there is 1,208 square feet that the applicant could use at their discretion.

Commissioner Hay needed clarification on the first sentence of the second paragraph on Item No. 5 in the staff report.

Mr. Lindsay noted that the words “partially made” are a typo. The original staff report indicates those findings, and that the findings could be made. He explained that the point on the second paragraph is showing that the finding could be construed a different way, and if the variance could be granted, it would not be material detrimental to the public welfare, and if a similar request was approved, it would not necessarily be granting a special privilege.

Commissioner Hay asked who makes the determination that it is a special privilege. Mr. Lindsay noted that if the Commission recommends denial of the variance, staff had provided alternative scenarios, which are alternative considerations on how the findings could be made.

Commissioner Hay asked if it is up to the Commission to make the findings and Mr. Lindsay replied “Yes”.

**Commissioner Giordano** mentioned the wood decking interpretation issue that was brought up at the last meeting and asked if the interpretation would create a change in the hillside ordinance. After reviewing the 1994 Planning Commission minutes, she noted that there wasn’t even a consensus on making wood decks part of impervious surface area.

Mr. Lindsay stated the hillside ordinance does not specify removing this extraneous area, otherwise a variance wouldn’t be needed. The variance is an instrument being used to allow this and the findings can be made to grant a variance. This should not be considered an interpretation. Burdens are being placed on the property owner, and this variance allows relief of the burdens and to exercise the same rights as other property owners do.

Commissioner Giordano asked if a future applicant who had a similar problem would be able to use similar findings to allow their variance. Mr. Lindsay replied that this is a rare situation and the variance is a good instrument to allow this.

In regards to Chair Nitafan’s question about the tentative map of Vista Springs Court, Mr. Lindsay replied that the tentative map was approved by Santa Clara County (not the City), and prior to the requirements of impervious surface coverage.

Chair Nitafan commented that the engineers who created the tentative map could have deducted the extraneous driveway and increased the lots at Vista Spring Court.

**City Attorney Kit Faubion** explained that the hillside is a sensitive site because of visibility and many other reasons. In this case, there has to be a limit of the amount of ground that can be covered over. The tentative map will show the net lot area and buildable area and access to each lot has to be accessed through a public or private road system that extends from the public road.

Attorney Faubion went on to say that unless it is noted in the tentative map, the normal assumption is the lot is considered net area, and wouldn’t be assumed that the private road should be deducted from anything. In this case, staff mentions that the applicant didn’t have a choice on whether to have these roads and driveway on their property, and the applicant is suggesting that those areas not be counted against them when the impervious surface area is counted.

Chair Nitafan asked if the extraneous driveway could be considered a common area for the subdivision and Ms. Faubion replied that it would not be characterized as a common area for the subdivision. The only way it could be a common area is if there would be an easement that allows the rest of the lots to use common features and inform the owners of the property that they have a right to use the area. She went on to say that if the common area is not on the tentative map, it should be assumed that a driveway that serves one or two properties is intended to be common area.

Commissioner Lalwani asked staff which is the applicant's preference of alternatives 1, 2 and 3 and Mr. Lindsay replied that the applicant prefers alternative 3 which is to deduct the entire driveway width.

Chair Nitafan opened the public hearing on Agenda Item No. 1.

There were no speakers from the audience.

**Close Public  
Hearing**

**Motion** to close the public hearing.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

In regards to the Council's interpretation in 1994 which recommends wood decking be included in impervious surface calculation, Commissioner Giordano mentioned her concern that the Planning Commission at that time was divided on this issue and there was no clear message from the Planning Commission interpretation. She felt that this item should be agendaized at a future meeting.

City Attorney Faubion explained that the Planning Commission are planners for the City, and have the ability to raise issues of concern. The Commission could request staff to do more background work and come up with a recommendation and have the Council examine the issue.

Commissioner Giordano asked what the usual outcome is when issues are brought forth to Council. Ms. Faubion replied that if an issue came up frequently enough, the Council and the Commission would have to resolve it. In those instances, the ordinance may have to be revised. Once the ordinance is amended, then it is a requirement of the City, and staff has less flexibility. On the other hand, if the Council felt it wasn't an issue that comes up a lot, then they will leave it at guidance using an interpretation.

Commissioner Hay commented that the October 18, 1994 City Council minutes regarding the wood decking interpretation was included at the back of the agenda packet. Commissioner Hay agreed that the guidance to Council by the Planning Commission was unclear.

Chair Nitafan agreed with agendaizing the wood deck interpretation at a future meeting and Commissioner Giordano recommended that staff look at what other cities are doing.

In reviewing the 1994 minutes, Vice Chair Williams pointed out Bill Rush's comments which indicated that when it comes to wood decking, the size of the planks vary. One plank might have a ½ inch gap, prohibiting water from penetrating downward. Vice Chair Williams brought up another point that Mr. Rush mentioned which states that some decks have illegal over hangings and different types of awnings that would preclude any moisture getting to the ground in the first place. Vice Chair Williams stated that he would see concerns of including wood decks as part of the impervious area.

**Motion** to recommend approval of Variance No. P-VA2003-2 and "S" Zone Amendment No. P-SA2003-61 to the City Council based on the findings and conditions in the staff report.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Chair Nitafan opened the public hearing on Agenda Item No. 2.

**2. VESTING  
MAJOR  
TENTATIVE MAP  
(P-MA2003-1),  
SITE AND  
ARCHITECTURE  
REVIEW (P-  
SZ2003-1) AND  
USE PERMIT NO.  
P-UP2003-2: A  
request to subdivide  
a single 7.3 acre  
parcel, located at 95  
East Curtis Avenue  
(APN: 086-25-024)  
into 19 parcels for a  
285-unit multi-  
family residential  
development.  
*Applicant: Parc  
North Associates  
LLC.***

**Troy Fujimoto, Acting Associate Planner** presented a PowerPoint presentation to subdivide a single 7.3 acre parcel, located at 95 East Curtis Avenue (APN: 086-25-024) into 19 parcels for a 285-unit multi-family residential development with exceptions to the following R-4 (Multi-Family Very High Residential) development standards; setbacks, auto and bicycle parking, and open space and recommended approval of site and architecture review and use permit requests and recommend to City Council approval of vesting major tentative map.

Vice Chair Williams asked what are the parking requirements on the east end of Curtis Avenue. Mr. Fujimoto replied there will be 18 off site spaces to be used off Hammond and Curtis and the spaces will not be reserved for the development and will only be used based on availability.

Vice Chair Williams mentioned that he visited the project site and was concerned with Pacific Motor Transit (PMT) loading and unloading their trucks on Curtis Avenue. He asked staff if there are potential parking problems and restrictions to commercial vehicles. Mr. Fujimoto mentioned that the applicant has spoken with PMT and they are willing to no longer continue to load and unload their trucks on Curtis Avenue.

Commissioner Sandhu commented on his excitement about the project and asked how many stories will the development include. Mr. Fujimoto replied that the Product A type of development will have 2 stories above the garage and the Product B type of development will have 3 stories above the garage.

Commissioner Lalwani compared the number of units between Parc North and Parc Metro and noted that Parc Metro has 50 acres and 385 units and Parc North has 7.3 acres and 285 units. She commented that the project is very high density. Mr. Fujimoto clarified that Parc Metro is zoned as R3, which is a lower density project, and Parc North is zoned R4, which is a higher density project. Parc Metro has 13 units per acre and Parc North has 31 units per acre.

Commissioner Hay asked if staff has approved tandem parking in the past and Mr. Fujimoto replied that this is the first project requiring tandem parking.



Commissioner Hay commented that he doesn't have a problem with high density but is concerned with the exceptions the applicant is requesting such as allowing tandem parking, reducing the size of the compact spaces, building smaller roadways and reducing open space requirements.

Mr. Fujimoto explained that the reason why tandem parking is required is because the compact space size does not meet the requirement by six inches.

Mr. Fujimoto further explained that higher density projects have a clustered feel and reduced open spaces. He mentioned that the Fire and Engineering departments approved the dimensions of the roadways and there is adequate clearance for service and fire engine vehicles.

In regards to the open space requirement, Mr. Fujimoto replied that when the Midtown Plan was approved, there weren't any projects the City had to verify whether the proposed development standards would work. He explained that this is the first R4 project for the city, and staff is experiencing the real life situations that occur. The applicant doesn't meet the requirements by approximately 2.3% of the 25% requirement. Mr. Fujimoto went on to explain the design of the proposed development.

Commissioner Hay referenced the transportation impact analysis report about the project widths, ranging from 25 feet on the main road, and 20 feet on the dead end road and that a 3-point turn may be required for larger vehicles. Commissioner Hay asked what constitutes a larger vehicle. Mr. Fujimoto replied that a full size SUV truck would be considered a large vehicle, or any vehicle larger than a standard vehicle.

Commissioner Hay asked if two standard vehicles could park in the tandem parking space and Mr. Fujimoto replied that a tenant would have to park their cars one behind the other.

Commissioner Hay asked what is the reason for 10 units not having the two coverage spaces and Mr. Fujimoto replied that the units do not have the footprint to accommodate a two-space garage, only one space.

In response to Commissioner Hay's clarifying question regarding the design of the proposed sound walls, Mr. Fujimoto replied that the walls are 5 ½ feet in height, are solid, and made with clear acrylic. The walls will prevent sound from getting through.

In response to Commissioner Hay's clarifying question regarding the mechanical ventilation system, Mr. Fujimoto replied that some units would not meet the 45 average LDN level if the windows were open. In order to meet the requirements, the windows will have to be closed and the mechanical ventilation system will circulate fresh air.

Commissioner Hay mentioned his concerns about potential flood problems. He explained that the project is going to be built up from the base because of the area of the property, and that retaining walls are going to be needed for backfill. The assumption is the water will go down through the backfill. He explained that where he lives, the developer put up a sound wall, not a retaining wall, which was not designed to provide drainage. He mentioned that when the water flows towards the bay, the water hits the sound wall, and in the process, has taken concrete and bent it because of the pressure. The reason was it wasn't designed as a retaining wall and there is no drainage. He asked what is the applicant going to do for drainage issues. Mr. Fujimoto replied that the applicant is proposing a drainage system underneath that is able to accommodate rain and storm seasons.

Commissioner Galang asked if the City requires signs for compact stalls and Mr. Fujimoto replied "No" because the compact stalls will be in the private garages.

Commissioner Galang asked if the applicant will require handicap parking and Mr. Fujimoto replied that there will be a handicap space at the recreation building, but will not be required for the privately owned units and garages.

Chair Nitafan mentioned his concerns for emergency access, and Mr. Fujimoto replied that the project will have four entrances, which is adequate access for emergencies.

Chair Nitafan asked if there will be double pain windows and Mr. Fujimoto replied, "Yes".

Chair Nitafan mentioned his concerns about the railroad track noise near the development and asked if there are any provisions for vibration. Mr. Fujimoto replied that project will be 100 feet from the west side of the tracks and 400 to 500 feet from the east track so vibration is not considered a problem.

In response to Chair Nitafan's clarifying question regarding the size of Curtis Avenue, Mr. Fujimoto replied that 4 lanes of travel is proposed on the west and east side (two east bound, 2 westbound) of Comet drive. The ultimate right of way is 80 feet and the travel lanes are 11 to 12 feet. West of Comet there is 50 feet of right away and east of comet there is 35 feet of right away.

Chair Nitafan asked if the road will be crowded and Mr. Fujimoto replied that it will be crowded but will be able to accommodate traffic.

Commissioner Lalwani asked if the parking spaces on Curtis Avenue will be used for public or private access and Mr. Fujimoto replied "public".

In response to Commissioner Lalwani's clarifying question regarding the number of units, Mr. Fujimoto replied that there are 141 townhouse units and 144 condo style units proposed.

In regards to Commissioner Hay's concerns about building smaller roadways, Mr. Fujimoto replied that 25 feet of right of way is required for two-way traffic. In this case, the project is requiring 20 feet of right away, only cutting out 5 feet.

Commissioner Hay asked how this compares to the narrow streets of Park Town, and Mr. Fujimoto replied that the Parc North development will have narrower streets.

Commissioner Hay recalled that when he was interviewed for the Planning Commission, one of the questions asked was “What do you consider bad planning?” and that the answer was narrow streets. He mentioned his concerns of having people parked on both sides of the street, and leaving no room for cars.

Mr. Fujimoto commented that the Park Town development is a lower density project and that the Parc North development is a high-density project. He explained that high-density projects have an urban type of setting, with narrow drives, and not enough open space. Mr. Fujimoto went on to explain that narrow streets have been used in other cities and that narrow streets slow down people, making it more pedestrian friendly, and enabling cars to slow down and not cause traffic.

Commissioner Hay asked what cities have narrow road widths and Mr. Fujimoto replied the City of San Francisco and City of Denver.

Commissioner Hay commented that his first impression of the project is that it is too big for the site, and that it seems we are trying to squeeze everything in where there isn't enough room to turn around. He would like staff to research other cities that have high-density projects and narrow streets and bring back the information to the Commission to see what problems they have encountered.

Commissioner Lalwani mentioned that she added up the number for parking stalls from the presentation and that the numbers don't match on the matrix. Mr. Fujimoto replied that it is a typo and that the correct number should be 635, not 637.

Commissioner Lalwani asked if the uncovered parking is outside and Mr. Fujimoto replied, “Yes”.

Chair Nitafan invited the applicant to speak.

**Mr. Murrar, Applicant, Parc North Associates, Newport Beach, California**, congratulated staff for their vision of Midtown and the adoption of the Midtown Plan. He felt that the Parc North project was very exciting in terms of urban development and thanked staff for their tremendous effort. Mr. Murrar also thanked his many colleagues (sitting in the audience), who were major partners in the development of this project.

Mr. Murrar presented a PowerPoint presentation on the objectives and challenges of the project. Below is a summary of the PowerPoint presentation:

**Parc North Development objectives**

- Implement the vision of the Midtown Plan
- Create homes and living environments responsive to the market
- Add to the stock of affordable housing
- Create substantial value for the City of Milpitas
- Provide an economically viable project

**Parc North Major challenges**

- Creating a high density community with attractive desirable homes
- Finding solutions to deal with the cars
- Solving the financing and insurance issues for attached high density housing
- Providing homes affordable for very low, low and moderate-income families

### **Parc North Major challenges**

- Create spine road for access to homes arranged on pedestrian paseos
- Create landscaped trail bikeway adjacent to Curtis and pedestrian scale
- Arrange garages on motor courts to hide garage doors from view
- Private garages with 90% two car
- Direct private access from the garage to the home
- Architectural interest

**Pat Brown, RGC**, addressed some of the issues that were brought up from the Commission such as the noise barrier issue, drainage issue, smaller roadways, compact spaces and handicap parking.

Mr. Brown explained that for the noise barrier issue, Parc North will have a solid balcony-railing feature with a Plexiglas panel fence. The total height is 5 ½ feet, with 3 feet of it being Plexiglas.

For drainage concerns, Mr. Brown explained that for a normal ten-year event storm, there is a storm drain that is 60 inches under ground that flows from the western side through the eastern side. The grades of the Parc North garages are two to three stories above Curtis Avenue. In a 100-year event, the water overflows from the Great mall along Curtis Avenue through the railroad tracks. He explained that to meet the requirements, the project has to be a foot above the railroad tracks for the lowest living floor.

For roadway concerns, Mr. Brown explained that the City's residential standards for roads on both sides of the street is 36 feet, and the applicant is proposing a 34 feet road way.

In response to Commissioner Hay's concerns about parking spaces, Mr. Brown explained that the parking spaces will be striped and are 7 ft. by 20 ft.

In response to Commissioner Galang's concern about handicap access, Mr. Brown explained that when you have multi story development, handicap parking doesn't need to be provided. The applicant is obligated to provide access for common facilities such as the recreation facility.

Vice Chair Williams commented about his earlier issue with PMT being adjacent to the railroad yard. He also mentioned that when future residents will have issues about vibration and sounds coming from the railroad. He asked the applicant if they could notify a potential buyer that this condition clearly exists in the area, so that there are no future complaints.

Mr. Murrar responded that the noise issues will be fully disclosed to the department of real estate in a disclosure statement, but that he can't make any guarantees that people won't complain. He stated that Parc North will do their best to have them sign off on those disclosure statements.

Mr. Brown added that it will also be added to the CC&R's for property owners. Commissioner Lalwani also added that potential buyers be notified that they will be living near the Great Mall

Regarding the annual tax revenue, Commissioner Lalwani noted from Mr. Murrar's presentation that 1 million, or 1% of revenue, will be generated to the City, and noted that this is slightly higher than average. Mr. Murrar noted that just recently, the Redevelopment Agency (RDA), allowed the City to capture a larger share of revenue in the Midtown Area.

Commissioner Hay thanked James Lindsay, Acting Planning Manager, for his effort on providing the projects MOU with the RDA to the Commission.

Commissioner Lalwani asked about the colors of the development and Mr. Murrar passed around a color palette.

Commissioner Sandhu asked the applicant when the units would be available to the public. Mr. Murrar replied that they should be ready by the end of the year 2004 or the beginning of the year 2005.

Commissioner Sanhdu asked if the development will be advertised in the local papers and Mr. Murrar presumed that they would.

Chair Nitafan mentioned that he is satisfied with the way the project has met the ordinance requirements and 20% affordable housing goal. Chair Nitafan noted Condition No. 3 that states the following:

3. *Given the conceptual information submitted regarding several site and architectural aspects, the following shall be submitted to the approval of the Planning Commission Subcommittee prior to building permit submittal: (P)*
  - a) *The applicant shall submit revised building elevations that clearly show all details of the buildings without any conceptual lines and shadows. (P)*
  - b) *The applicant shall submit plans that include revised elevations for the rear (garage façade) of the buildings at the east end of the project (buildings number 10 and 11). (P)*
  - c) *The applicant shall submit plans that include a revised elevation and roofline for the building facing Curtis Avenue in Product A (building no. 4) and for the building facing Parc Lane (building no. 1). (P)*
  - d) *The applicant shall submit plans that include a revised rear (garage) elevation for all buildings to provide increased architectural interest to these building elevations. (P)*
  - e) *The applicant shall submit plans that include the location of bicycle parking in the private recreation area. (P)*
  - f) *The applicant shall submit plans that include a revised recreational building with a recreation/multi-purpose room of a minimum size of 600 square feet. (P)*
  - g) *The applicant shall submit plans that include concrete stamping or incorporate designs and vertical elements to break up expanses in the exterior faces of all perimeter and retaining walls. (P)*
  - h) *The applicant shall submit plans for the decorative paving accents throughout the site. (P)*

*The applicant shall submit a sun/shadow study to the City for review. (P)*

Chair Nitafan asked if the architectural designs and drawings could come back to the Planning Commission instead of the Planning Commission Subcommittee. Mr. Fujimoto responded that it is up to the Commission to revise the condition.

Commissioner Hay commented that he would still like staff to bring back a report at a future date to see what other cities are doing in regards to roadways in high-density projects. Mr. Murrar said he would be happy to contribute information since they have done work for cities such as San Diego, Los Angeles and Irvine.

In response to Commissioner Lalwani, Mr. Murrar responded that he has been involved with the City since 1997.

Commissioner Lalwani mentioned that she was confused about having the designs come back to the Commission. Chair Nitafan suggested that the designs come back since there are no details on the plans and elevations, and so the Commission could add more comments.

Mr. Murrar mentioned his concerns that if the working drawings were to come back to the Commission, it might delay the project. He asked the Commission to please consider this request.

Mr. Lindsay clarified that the working drawings would not come back, only the enhanced elevations and architectural details. Also, it wouldn't be a public hearing item. Staff would have to write a report and present the plans to the Subcommittee Commission or the Planning Commission.

Mr. Murrar asked if the Commission chooses to do that, would it be at a public meeting and Mr. Lindsay said it would not be a public hearing item.

Commissioner Galang asked the applicant how they qualify potential buyers. Mr. Murrar replied that the City makes the selection in a pool and gives the names to the sale staff. Mr. Lindsay added that Felix Reliford is the main person in charge and gets support from Planning staff and the City Manager's office.

Chair Nitafan opened the public hearing.

**A concerned resident from Parc Metro** mentioned his concerns with parking issues on Curtis Avenue. He complained that over 100 cars park on the street, and there is no more room for cars. He would like the City to build a wider road and doesn't buy into the fact that narrow roads means cars will slow down. He felt that the parking problems will cause issues in the future.

**Sylvia Leung, Developer with Green Earth Engineering and Construction, 968 Hanson Court**, commends the City for having a great vision of smart growth. She noted that the Midtown Plan was adopted last year and since then, no project have gone forward on Main Street. She felt that urban living is a lifestyle choice and urges the City to move from the planning stage to the execution stage. She is in support of the project.

**Don Peoples, President of the Milpitas Downtown Association**, mentioned that the Association was very pleased with the aesthetics of the building and felt that the project is an island within the community. He summarized that the Midtown plan is urban and is drawing people to interact within the community. He commended Parc North for their vision and highly recommends the project.

**A Concerned Resident at Parc Metro and Vice President of the Home Owners Association (HOA)** mentioned her concerns with having a number of sewage problems at Parc Metro such as toilet backups and sewage in the streets. She is also concerned that residents have to pay \$190 a month to clean up graffiti and pick up trash. She also complained that the drinking fountains don't work and that cable is a nightmare. She is concerned about a high-density project moving in the area because of crime, problems and traffic.

Mr. Murrar commented that there will be parking issues for all high-density projects. His team has provided parking regulations, and mentioned that one of the major issues for parking is that people don't park in their garages. These projects are not designed for a single family detached unit, and residents have to park in the garage or there will be parking issues. Parc North has tried to respond to their issues by providing them the rules and regulations and enforcement procedures, and requiring people to park in their garages.

In regards to sewer problems, **Mike McNeely, City Engineer**, mentioned that he and the developer are meeting with Parc Metro to go over the requirements regarding the sewer infrastructure at Parc Metro. He noted that there have been overflows and the developer has to replace some items.

Commissioner Hay asked if the sewage system could handle the Parc North development and Mr. McNeely said "Yes".

Chair Nitafan asked if there is a security plan in place to reduce crime. Mr. Fujimoto responded that the project was reviewed by the Milpitas Police Department and they have enough manpower to control the area without impacting any services.

Mr. Murrar added that the nice thing about Parc North is that every single residence has its own private garage and own internal stairway from the garage to their home, and it is not available to outside people. He also noted that all homes will have fire sprinklers.

#### **Close Public Hearing**

**Motion** to close the public hearing.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

After further discussion, the Commission noted that it was not necessary for the architectural designs to come back to the Commission.

**Motion** to approve Site and Architecture Review (P-SZ2003-1) and Use Permit No. P-UP2003-2 and recommend to Council approval of Vesting Major Tentative Map (P-MA2003-1), with the added conditions below:

- Prior to building permit issuance, plans shall show striping for the parallel parking along the spine road (Parc North Drive). (PC)
- The applicant shall provide a disclaimer in regards to the neighboring/surrounding uses for future property owners of the project. (PC)
- The applicant shall include a condition for residents to park in their garages in project's CC&R's. (PC)

M/S: Williams/Sandhu

AYES: 7

NOES: 0

**IX.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:32 p.m. to the next regular meeting of September 24, 2003.

Respectfully Submitted,

James Lindsay  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary



**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**August 27, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Hay, Lalwani and Sandhu  
Absent: None  
Staff: Faubion, Judd, Heyden, Pereira and Rodriguez

**III.  
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

**Don Peoples, owner at 529 S. Main Street and President of the Downtown Association**, invited the public on September 4, 2003 at the City Hall Community room to hear a staff presentation on the relocation of the library to Main Street and the proposal of 280 homes to be built near the Great Mall by RGC.

**IV.  
APPROVAL OF MINUTES  
August 13, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of August 13, 2003.

Staff and **Commissioner Sandhu** made a correction to page 3 of the minutes and changed the following sentence to read: ***Kit Faubion, City Attorney**, said that Commissioner Sandhu will have to abstain from voting if he lives within 500 feet of the property. Commissioner Sandhu recused himself and left the dais at 7:40 p.m.*

**Commissioner Galang** made a correction to page 11 of the minutes and changed the following sentence to read: *Commissioner Galang suggested that if it is possible that the quiet study room be placed at the back, not near the front main entrance door and Mr. Rogge said that it would be considered as an option.*

**Motion** to approve the minutes with the changes.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Sandhu) – For Variance No. P-VA2003-2 and “S” Zone Amendment No. P-SA2003-61.

**V.  
ANNOUNCEMENTS**

Commissioner Sandhu, on behalf of the Sikh Foundation of Milpitas, invited the public to attend “Cultural night” on August 30, 2003 at the Milpitas Community Center. General admission is \$10.00.

**Commissioner Giordano** announced she attended an informative workshop hosted by the Urban Land Institute, and brought back handouts on inclusionary housing, mixed-use development and transit-oriented development. She plans on attending another workshop on financial funding for infrastructures.

**Commissioner Lalwani** announced a seminar on “Raising teens with love and understanding” that will be held on August 31, 2003 from 3 p.m. to 5 p.m. at the India Community Center. Speakers are Steve Saso, a high school teacher and counselor and Commissioner Sandhu, father of three.

**VI.  
APPROVAL OF  
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

**Motion** to approve the agenda.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
Item No. 3**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item No.3.

There were no speakers from the audience.

**Close Public Hearing  
Item No. 3**

**Motion** to close the public hearing on Consent Item No. 3.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item No. 3

**\*3 "S" ZONE AMENDMENT NO. P-SA2003-103 AND USE PERMIT NO. P-UP2003-30:** A request to construct a 3,000 square foot modular building to house classrooms for senior activities in conjunction with the existing interim Senior Center, including new landscaping, trash enclosure and development standard deviations at 540 S. Abel Street - zoned MXD, Mixed Use (APN 86-10-025). Applicant: City of Milpitas. Project Planner: Staci Pereira, (408) 586-3278. CP#8151. (*Recommendation: Approval with conditions*)

M/S: Hay/Giordano

AYES: 7

NOES: 0

**VIII.  
PUBLIC HEARINGS**

Chair Nitafan opened the public hearing on Agenda Item No. 1.

**1. VARIANCE NO. P-VA2003-2 AND "S" ZONE AMENDMENT NO. P-SA2003-61:** *(Continued from June 25, 2003)* A request to exceed the maximum allowed impervious surface coverage in order to accommodate wood decking and other back yard amenities for the single family hillside residence located at 510 Vista Spring Court. *Applicant: Franklin and Celina Camillo.*

**Annelise Judd, Assistant Planner,** presented Variance No. P-VA2003-2 and "S" Zone Amendment No. P-SA2003-61, a request to exceed the maximum allowed impervious surface coverage in order to accommodate wood decking and other back yard amenities for the single family hillside residence located at 510 Vista Spring Court.

Ms. Judd noted that the existing improvements include a flagstone patio, elevated wood decking, a dog kennel, a basketball court, decorative water fountain, tool shed, built in barbeque grill with a trellis, seating area and retaining walls. The applicant is requesting that the impervious square footage associated with the extraneous driveway area be deducted. Staff does not support the other cited hardships, but is in support of deducting the extraneous driveway area from the site's impervious area total, thus, presenting a possibility for the site to keep some of the existing back yard amenities. However, staff does not support the variance request in its entirety. Therefore, staff recommends closing the public hearing and recommending denial to the City Council.

Regarding the variance, **Commissioner Hay** asked if the applicant complies with removing part of the existing impervious area, would a variance not be necessary. Ms. Judd replied that they would still need a variance to address deducting the extraneous driveway area.

Commissioner Giordano commented that the definition of impervious surfaces implies that it is something impenetrable and is not open. She asked if a raised wood deck would fall under this category. Ms. Judd replied that an interpretation by the Council in 1994 concluded that wood decking creates a visual manifestation and is to be counted as impervious area.

Commissioner Giordano commented that when the Council looked at the specific decking back in 1994, it seemed that the decking was more of a visual impact. She asked staff if the deck could be looked at as being a non-visual impact since it is in a non-visual impact area behind the house. Ms. Judd replied that the Commission could recommend such an interpretation to the City Council.

In response to Commissioner Giordano's question, Ms. Judd replied that if the deck were to be removed from the impervious surface area, the number of square footage left would be 440 square feet.

**Tambri Heyden, Acting Planning and Neighborhood Services Director,** commented that a percentage of the wood deck is still considered impervious area because rainwater cannot penetrate it.

Commissioner Giordano needed clarification on why a raised open deck was never included in the hillside ordinance. She feels that staff needs to look at this project as possibly being different from the 1994 interpretation from Council and possibly removing the deck from the list of the impervious surface.

Commissioner Hay commented that he is not sure if he agrees with the assumption that is being made that the deck is purely a visual issue and feels that a presentation and staff report is needed at another meeting on the full history and background of this particular issue of 1994.

Chair Nitafan asked if the applicant was aware of the new ordinance and if they knew their residence was non-conforming. Ms. Judd replied that they are aware now, but were not aware at the time the improvements were constructed.

Chair Nitafan asked how staff found out they were not in compliance with City regulations and Ms. Judd replied that the City received a complaint and followed up on it.

Chair Nitafan introduced the applicant.

**Celina Camillo, 510 Vista Spring Court**, said that on behalf of her family, she apologizes for being ignorant of the ordinance and did not have the intentions of disobeying the ordinance. She noted that her driveway is about 9% of the impervious surface of the lot and the house is 3% of the impervious surface of a 2.2-acre lot. She said that her family wanted amenities they could enjoy, not knowing that there was an ordinance. She only found out after her neighbor told her and since then, has done everything possible to follow the rules and regulations.

Not being a technical person, Mrs. Camillo was concerned and asked Don Peoples, Civil Engineer, to help her with the variance application. She pleaded with the Commission to give her justification on why the driveway should be allotted against her.

Don Peoples, Civil Engineer and representing the applicant, pointed out the residential plans for the audience. He noted that the site improvements are very modest for the area, and that the only thing that is out of whack is the driveway. He pointed out that the driveway is huge and is there for unique reasons. He feels that the engineer who designed the house did not do a good job of designing the common area, which could have been easily mitigated. He feels that the applicant is being penalized by the ordinance because this lot combines all of the limitations and natural conditions that are needed for a large area, and if it were built this way, they would have a larger impervious area allotment.

Mr. Peoples also noted that the neighbor who made the complaint has a 1.4-acre lot and is able to build a pool and add an addition to the house. He pointed out that the improvements the applicant would like to make are comparable to the neighbor. He pleaded with the Commission to approve the variance for the applicant since the improvements they want are considered to be modest and not anything above ordinary for the neighbor.

Commissioner Lalwani referenced lot 19 from the drawings and asked if the neighbor who complained lives at this lot and Mr. Peoples replied, "Yes".

Commissioner Hay commented that Mr. Peoples raised some concerns about the neighbor and asked staff to follow up. He asked if the driveway is fully on the applicant's property and if the neighbor has an easement that allows him to access the property.

Commissioner Hay stated that he doesn't understand why the applicant would get penalized for sharing the easement with the neighbor and asked what is the impervious surface of the neighbor's lot. Mr. Peoples agreed with Commissioner Hay's comments and mentioned that the easement is used as more of an access. He also pointed out that the neighbor is using the easement as storage for vehicles and construction equipment.

Commissioner Giordano commented that the homeowners association should be in charge of the common area. She also noted that on the deed to the house, the owner should have undivided interest in the common area. She concluded that staff might want to look at the common area and apply it to expanding the parcel size when looking at the impervious surface calculation.

**Vice Chair Williams** commented on the extra width of area that is in the driveway near the residence, and asked if this was a request from the City for emergency purposes. Ms. Judd confirmed that it does serve as a back up space for emergency vehicles. If a fire truck were to come up to the site to visit the neighboring parcel, the truck would be able to back up into this space and turn around.

Vice Chair Williams noted that if the land had been developed as a common area or public street with a cul-de-sac turn around, the whole area would be equivalent to a typical road. He noted that the road serves two homes and is over 150 feet long and has to provide room for fire vehicles.

Commissioner Lalwani agreed that the applicant and the neighbor should share 50/50 of the impervious surface area since they are sharing the road. Ms. Judd commented that if this parcel had not been serving access to the neighbor, it would have to have a minimum of 14 feet driveway width. It is staff's position to support deleting the 7 feet width, the fork that serves the neighboring parcel, and the emergency vehicle back-up area.

Mr. Peoples pointed out that staff has done everything logical to consider this driveway as a road. If it was considered a road, then it would be well within the limits of the ordinance. He would like the Commission to accept the variance as a unique lot.

Commissioner Galang asked the applicant if she was the first owner and Mrs. Camillo responded that she was the second owner.

Commissioner Galang asked the applicant when she moved into the house and Mrs. Camillo responded, "In the year 1995".

Commissioner Galang asked the applicant when were the improvements made to the house and Mrs. Camillo responded, "In the year 2000".

Commissioner Galang asked Mrs. Camillo if she hired a licensed contractor and she said, "No".

Commissioner Galang asked staff if the licensed contractor is responsible for the expansion and Ms. Judd replied that they are responsible for the construction, not the expansion.

Commissioner Galang asked if the contractors can be relied upon for knowing the rules and regulations and Ms. Judd replied that most of them do know the rules, but it is not wise to rely on the contractor. Ms. Heyden added that the property owner is ultimately responsible in either case.

Chair Nitafan pointed to a shaded area near the driveway and asked if the applicant would be in compliance if that area were deducted. Ms. Judd commented that if the applicant were to deduct the entire 21 feet of the driveway, up to the fork and the turnaround, then they would be in compliance.

In regards to the September 1992 hillside ordinance, Commissioner Giordano asked if a hillside project in 1994 had an interpretation that included adding wood decking to an impervious surface, would that automatically change impervious surface calculations in the ordinance for future applicants.

Ms. Faubion replied that an interpretation is presumably based on factual conditions that were raised at that time and staff can only speculate as to what some of those factors were, but do not know for sure. She went on to say that an interpretation is not binding on anybody and can be useful that something down the way has a very similar situation. The only way it can become binding in the future is if it were incorporated formally into the ordinance through a zoning ordinance amendment.

Commissioner Giordano asked if there is an ability to look at the variance process and consider this lot being unique in nature than any other hillside lots. She also asked if it could include common area that is not addressed in the ordinance.

Ms. Faubion commented that unless there was something stating that in the adopted ordinance, it would not be possible. The common area is a common area because sometimes it is unbuildable, or for other various reasons. She noted that often times the ordinance will inform the decision makers what that decision is, and unless the ordinance says the building area includes the site and share of the common area, then it is not possible.

Commissioner Giordano asked staff if they have looked at wood decks since 1994 for other hillside projects. Ms. Judd replied that since 1994, staff has consistently counted wood decking as impervious area per the Council interpretation.

Commissioner Giordano asked why the hillside ordinance was never changed to reflect that language. Ms. Heyden noted that staff chose to follow in the direction of Council.

Commissioner Hay asked if the property were legal non-conforming, would the applicant be able to remove coverage from one area to another, so that the net change is zero, and be allowed to do that without going through the variance process. Ms. Judd replied that if the impervious surface coverage area was removed through the direction of complying with the ordinance, then the non-conforming impervious area could not be replaced on the site, than the exceedance could not be exacerbated. Ms. Heyden also added that it would have to be reviewed by staff on a case-by-case basis, but would most likely require a variance.

Commissioner Hay asked if the extra 7 feet of driveway width and the turnaround for the fire trucks were removed, would the applicant still have to go through a variance process for the net gain or net loss. Ms. Judd explained that staff is proposing to deduct the extraneous driveway area from the site total. When that number is deducted from the impervious surface coverage total, the resulting number is less than what the ordinance allows. She went on to say that in order to comply with the ordinance, the applicant could still retain approximately 1,000 square feet of amenities, but would still have to remove some of the improvements.

In response to Chair Nitafan's question regarding deducting the turnaround, Ms. Judd replied that a portion of the existing driveway could be replaced with a grass-paved material that is structurally strong so that cars can park on it. This would require Fire Department approval.

Chair Nitafan asked if after those deductions, would the applicant be allowed to put in a swimming pool. Ms. Judd replied that if the applicant replaced a certain impervious area and if the fire department approved it, then staff would support it.

Regarding the 1994 Council interpretation, Mr. Peoples noted that if the deck was part of a second floor balcony, then it is not considered an impervious surface. Ms. Judd confirmed this.

Mrs. Camillo referred to the drawings and noted that her deck is elevated and that it is on the kitchen and bathroom deck.

Commissioner Hay commented on the deck and pointed out that the interpretation should be looked at. Commissioner Hay suggested that staff take a look at the property, the decking, the ordinance, and make sure that we are in compliance and to work with the applicant on converting some of their impervious surface coverage.

**Public Hearing to be  
continued to September 10,  
2003.**

**Motion** to continue the public hearing to September 10, 2003.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

**2. USE PERMIT AMENDMENT NO. P-UA2003-4**

*(Continued from August 13, 2003):* A request to amend Use Permit No. 1023 to add live entertainment, extend hours of operation to 1:00 A.M. on weekends, and permit serving alcoholic beverages at an existing restaurant (Royal City) located at 90 S. Abel Street without adding required parking for these new uses at Abel Plaza. *Applicant: Young Thai (Royal City Restaurant).*

Chair Nitafan opened the public hearing on Agenda Item No. 2.

**Staci Pereira, Assistant Planner**, presented a request to amend Use Permit No. 1023 to add live entertainment, extend hours of operation to 1:00 a.m. on weekends, and permit serving alcoholic beverages at an existing restaurant (Royal City) located at 90 S. Abel Street without adding required parking for these new uses at Abel Plaza, zoned MXD-TOD - Mixed Use with Transit Oriented Development overlay, and recommended approval with conditions based on the findings in the staff report.

Ms. Heyden pointed out the cover memo from Mr. James Lindsay to the Commission that discusses several communication letters from the City Attorney and the attorney representing the property owner. There seems to be a dispute between the tenant, the ground lessee, and the property owner. Based on the City Attorney's opinion, staff believes that the ground lessee, who has signed the application for the Use Permit, has control over the improvements of the site. Staff believes they have processed the application with the proper authority.

Regarding the applicant, Commissioner Hay mentioned his concerns with what may potentially be housing in the area. If housing goes into that area, then he recommends double doors be used as a mitigation measure so the noise doesn't bother future neighbors. He would like to add a condition stating this.

Ms. Pereira commented that a condition could be added if future complaints are received, which would be brought back to the Commission to be reviewed. With that, Commissioner Hay suggested that a condition regarding double doors be added in staff's recommendation.

Ms. Heyden added new special condition No. 22 which reads the following:

*22. If at anytime an adjacent property is redeveloped or developed as a residential use, double doors shall be installed immediately at the business entrance to prevent any noise impacts to the adjacent residential uses.*

In regards to the staff report, Vice Chair Williams asked about citations to the property owner and asked if this has anything to do with previous signage issues. Ms. Pereira explained that there have been violations to the zoning code, Neighborhood Beautification Ordinance and the sign ordinance. The history of sign ordinance violations at this site are handled with the business owners, not the property owner. Notices have been sent out to the business owners that have been using temporary signs. She went on to say that other violations regarding site improvement violations of the original approval include missing landscaping, a rear wall that was supposed to be replaced, missing metal doors on the trash enclosure and lighting alterations.

In response to Vice Chair Williams' question regarding the fencing issue with Kentucky Fried Chicken (KFC) and the applicant, Ms. Pereira responded that there was an agreement with the current applicant and KFC and that a chain link fence went up.



Vice Chair Williams noted his concerns with the busy parking area where there might be very young people who might not be in close supervision and also problems associated with parking lot improvements. Ms. Pereira noted that there are 15 trees missing and the trees will have to come back as a revised landscape plan to be reviewed by the Planning Commission.

Chair Nitafan pointed out a handout from the applicant and noted that the business hours on Saturday are from 5 p.m. to 10 p.m., but the staff report notes the hours on Friday and Saturday to be until 1 a.m. Ms. Pereira explained that the handout was submitted by the applicant in January and the hours have been changed to 1 a.m.

Chair Nitafan mentioned his concerns that if this application is approved for entertainment and alcohol and extended hours until 1 a.m., this is going to set a precedence for other restaurants to apply. Ms. Heyden explained that the serving of alcohol and entertainment requires a use permit, and if the Planning Commission denied applications in the past, it was because of the applicant's neighborhood location, or not sufficient parking to serve more intense uses being added to the restaurant. She noted that restaurants could still apply for a use permit, which will be evaluated on their site characteristics and adjacent neighborhood, and may be supportable by staff.

Ms. Pereira assured the Commission that this restaurant cannot turn into a nightclub due to certain limitations that would prevent it from occurring such as serving food all night long in conjunction with entertainment and not being capable of meeting building and fire requirements.

Commissioner Galang referenced special condition No. 8, which reads as follows

8. *Within six (6) months after the live entertainment begins (i.e. upon certificate of occupancy issuance), a public hearing and review by the Planning Commission shall occur to assess any concerns related to noise, security, safety, and parking issues. The following items will need to be performed and submitted by the applicant for this review:*

- a. A seven (7) day parking study during the hours of operation;*
- b. Verification of food and alcohol sales receipts; and*
- c. Verification that private security was provided on Friday and Saturday nights.*

*The applicant shall be responsible for all fees and submittal requirements associated with this review.*

Commissioner Galang asked if the project would have to be reviewed by the Commission if there are no problems cited within six months. Ms. Pereira explained that Item No. 8 is a condition of approval, which requires it to be analyzed. If none of these factors turn out to be a problem, then it will be noted, receipted and filed, but the review will need to occur in order for these to be looked at.

Ms. Heyden noted a minor change for Condition No. 10 and amended the condition to read as follows:

*10. The business owner shall post signs in English (and other applicable languages such as Vietnamese, Chinese, Filipino and Spanish) inside the premises for all employees, which identify procedures for the food delivery and disposing of garbage prior to the issuance of a Certificate of Occupancy.*

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

## **Close Public Hearing**

**Motion** to close the public hearing.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

Motion to approve Use Permit Amendment No. P-UA2003-4 with added special condition No. 22 and revised special condition No. 10 as noted above.

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

Kit Faubion was excused at 8:51 p.m.

## **IX.**

### **UNFINISHED BUSINESS**

Chair Nitafan introduced Agenda Item No. 4 under Unfinished Business.

**3. VESTING MAJOR TENTATIVE MAP (P-MA2003-2):** Consider street names for proposed new cul-de-sac with 19-lot single-family residential subdivision at 1405 Kennedy Drive (APN 029-41-024).

Due to conflict of interest, Commissioner Sandhu abstained from voting and recused himself from the dais at 8:51 p.m.

**Annelise Judd, Assistant Planner**, presented a follow up report from the August 13, 2003 meeting to consider street names for a proposed cul-de-sac within a 19-lot single-family residential subdivision at 1405 Kennedy Drive. These names were taken from the City's list of potential street names that have historic significance and are listed as follows:

- Machado - The Machado family, one of several area families of Portuguese descent, ranches approximately 40 acres of apricot orchards near Jacklin Road and Russell Lane. Tony Machado ranches this area during the 1940s-1960s.
- Topham - Edward Topham was a Milpitas pioneer in the 1860s. He ran a wagon and agricultural implements factory, and served as Justice of the Peace during the 1870s. Henry Topham was a grain merchant during the 1880s, and Frank H. Topham served as Justice of the Peace in the 1910s.
- Thompson - Ruth M. Thompson was a school teacher at Calaveras School in the 1880s.

- Fanyon Court – Does not have historical significance but staff suggested the name since the street that dead ends into the new cul-de-sac is Fanyon.

Commissioner Hay congratulated Commissioner Giordano for coming up with the idea of suggesting a street name. He suggested the name Topham Court since the family were pioneers and served the community.

Commissioner Giordano suggested that she liked the name Machado since it was in closest proximity to this particular court and feels it has more historical significance.

Commissioner Lalwani asked how did the Machado name come about. Ms. Judd replied that it came from the Machado widow who made the request in the 1990's for her family to have a street named after them (Staff found the information from a former employee). Commissioner Lalwani suggested the name Fanyon Court to make it more practical, but doesn't really have a preference to what name is chosen.

Vice Chair Williams suggested Topham to give recognition to the struggles of pioneers and for making part of Milpitas.

Commissioner Galang and Commissioner Nitafan agreed with the name Topham and consensus was reached.

**Motion** to recommend that Topham be recommended to the Council as the naming for the new cul-de-sac.

M/S: Williams/Hay

AYES: 6

NOES: 0

## **X. NEW BUSINESS**

Chair Nitafan introduced Agenda Item No. 5 under New Business.

Commissioner Sandhu returned to the Council Chambers at 8:58 p.m.

### **4. DISCUSSION OF NEW ANTENNA REGULATIONS:**

Presentation of the impact on existing, residential satellite dishes resulting from the wireless communication facilities regulations adopted May 20, 2003. *Presenter: Tambri Heyden, (408) 586-3280.*

**Tambri Heyden, Acting Planning and Neighborhood Services Director**, presented a discussion on the impact of existing residential satellite dishes resulting from the wireless communication facilities regulations adopted on May 20, 2003. She noted that no action is required from the Commission.

Ms. Heyden explained that antenna regulations were adopted on May 20, 2003 and became effective 30 days after. To be exempt from those new regulations, an existing satellite dish would have to be considered legally existing. For it to be considered legally existing, a building permit would have to be required and the regulations at that time would classify the dish as an accessory structure.

Ms. Heyden pointed out that the satellite would need to be no closer than 3 feet to any side of the rear property line and a building permit is required depending on the height. She went on to say that any structure over 6 feet in height requires a building permit.

In order to make a legally existing residential satellite dish conforming, Ms. Heyden explained that the satellite dish would have to be 1 meter or less in diameter, or meet the following standards:

- Height
- Attachment
- Compliance with wind loading specifications
- Setbacks
- Location that is precluded from being located between the house and public right away
- Number of antennas
- Color restrictions

If the satellite dish is greater than 1 meter in diameter and doesn't meet the above requirements, then it has to go through the use permit process to legalize it.

Commissioner Hay asked how does the public and satellite dish companies know that the City has requirements. Ms. Heyden commented that staff has not done any outreach on this yet and will look into it.

## **XI. ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:02 p.m. to the next regular meeting of September 10, 2003.

Respectfully Submitted,

James Lindsay  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**August 13, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Hay, Lalwani and Sandhu  
Absent: None  
Staff: Faubion, Heyden, Oliva, Lindsay, Rodriguez and Rogge

**III.  
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

**IV.  
APPROVAL OF MINUTES  
July 23, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of July 23, 2003.

**Motion** to approve the minutes as submitted.

M/S: Lalwani/Galang

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

**Tambri Heyden**, former Planning Manager, announced that she is the new Acting Planning and Neighborhood Services Director, and James Lindsay is the new Acting Planning Manager and staff liaison to the Planning Commission.

**James Lindsay, Acting Planning Manager**, announced that there will be two free, half-day workshops aimed at providing local governments with the tools to implement Smart Growth policies, plans and projects. If anyone is interested in attending, contact Veronica Rodriguez at 408-586-3271 and she will make the arrangements. **Commissioner Galang** asked what time the workshop starts and staff announced that the workshops are from 8:30 a.m. to 12:30 p.m.

**Commissioner Hay** congratulated Ms. Heyden and Mr. Lindsay on their promotions and Chair Nitafan supported the same comments.

**Commissioner Lalwani** reminded that the Art and Wine festival will be held on August 16 and 17, 2003 at Los Coches Street and Milpitas Boulevard.

**Commissioner Giordano** announced that she attended the Silicon Valley Manufacturing meeting on August 6, 2003 and they discussed the Rivermark housing project. Also, there will be a tour of BART on Friday October 17, 2003 from 8:00 a.m. to 12:30 p.m. hosted by the Santa Clara County Housing Acting Coalition. Mayor Jose Esteves will be sponsoring the tour and attendees will visit four to five sites of housing and see how it is integrated with BART.

Commissioner Giordano asked for staff input regarding a resident at Weller Ranch who has a satellite dish that is not in conformance with the antenna ordinance. She needs clarification on the existing ordinance and to see if the satellite dish could be grandfathered in with the ordinance so that it could be expanded to benefit anyone else that might be encountering the same antenna issue.

Ms. Heyden asked if staff could agendaize this topic to the next Planning Commission meeting so that staff can have time to reread the ordinance and to give an overview. Commissioner Giordano agreed and there was no objection from the Commission.

**VI.  
APPROVAL OF  
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes to the agenda.

**Motion** to approve the agenda.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 3 and 4**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item Nos. 3 and 4.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 3 and 4**

**Motion** to close the public hearing on Consent Item No. 3 and continue Item. No. 4 to August 27, 2003.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 3 and 4.

**\*3 USE PERMIT NO. P-UP2003-27:** Request to operate a video store (Viet Video) in an existing 900 square foot retail space at Park Victoria Shopping Center, located at 84 South Park Victoria Drive, zoned C1-Neighborhood Commercial (APN: 088-04-078). Applicant: Oanh Bui. Project Planner: Kim Duncan, (408) 586-3283. (PJ #2339) *(Recommendation: Approval with conditions)*

- \*4 USE PERMIT AMENDMENT NO. P-UA2003-4** *(Continued from July 23, 2003):*  
A request to amend Use Permit No. 1023 to add live entertainment, extend hours of operation to 1:00 A.M. on weekends, and permit serving alcoholic beverages at an existing restaurant (Royal City) located at 90-94 S. Abel Street without adding required parking for these new uses at Abel Plaza, zoned MXD-TOD - Mixed Use with Transit Oriented Development overlay (APN: 22-40-045). Applicant: Young Thai (Royal City Restaurant). Project Planner: Staci Pereira, (408) 586-3278. (PJ#2316) *(Recommendation: Continue to August 27, 2003)*

M/S: Hay/Sandhu

AYES: 7

NOES: 0

## VIII. PUBLIC HEARINGS

Chair Nitafan opened the public hearing on Agenda Item No. 1.

**1. VESTING MAJOR  
TENTATIVE MAP (P-  
MA2003-2), MITIGATED  
NEGATIVE  
DECLARATION (P-  
EA2003-8) and USE  
PERMIT NO. 157: 1405  
Kennedy Drive. Applicant:  
The Riding Group. Staff  
Contact: Annelise Judd,  
(408) 586-3273.**

**Commissioner Sandhu** noted that he lives close to Kennedy drive but did not receive a public hearing notice in the mail.

**Kit Faubion, City Attorney**, said that Commissioner Sandhu will have to abstain from voting if he lives within 500 feet of the property. Commissioner Sandhu recused himself and left the dais at 7:40 p.m.

**James Lindsay, Acting Planning Manager**, presented a request to subdivide a 3.6-acre parcel into 19 single-family residential lots in conformance with the existing zoning district development standards and to rescind Use Permit No. 157 regarding an existing church use, at 1405 Kennedy Drive, zoned R1-6, single family residential (APN: 029-41-024) and recommended to Council approval with conditions, consistent with the general plan and zoning ordinance.

Mr. Lindsay noted that staff has received over 20 responses to the public hearing notice (including one letter from Charles King, whose letter was posted in the Milpitas Post) and that the majority request that the church building remain to have another church move in. Mr. Lindsay stated that the City does not have the authority to dictate to the existing property owner who the buyer should be and that staff's recommendation is to approve the project to City Council.

In response to Commissioner Lalwani's clarifying question on why the property owner doesn't want to sell their property to another church, Mr. Lindsay noted that the City doesn't have the authority to dictate to the seller who the owner should be and that the City doesn't get involved in private real estate transactions.

Commissioner Giordano asked about increase in traffic flow in the residential area and how many parking spaces does the existing church have. Mr. Lindsay replied that the traffic flow for the residential subdivision is expected to have 17 additional peak hour trips in the morning and 19 additional peak hour trips in the evening, and that Saturday and Sunday, the traffic is expected to have minimal impact. In addition, a traffic consultant provided a report and the majority of increase of traffic would be on Park Victoria.

Commissioner Giordano asked what is the significance of naming the new residential subdivision Cameron Court. Mr. Lindsay replied that Cameron Court was taken from a street name list and doesn't know the historical significance of Cameron. Commissioner Giordano asked if staff could bring back some other names to the Commission to choose from and Mr. Lindsay said, "Yes".

Commissioner Giordano needed clarification on park fees and asked which fund is the \$470,000 of park fees from the applicant going to. Mr. Lindsay replied that according to the subdivision ordinance, a park fee is allowed and goes to a designated park fund account.

Commissioner Galang asked what is going to happen to the existing church to which Mr. Lindsay replied that the Church of Jesus Christ of Latter Day Saints plans on demolishing the church and will not allow another church to occupy the building.

Commissioner Galang asked if the church members are aware that the church is going to be demolished to which Mr. Lindsay replied that they are aware and that the church has already found a buyer.

**Vice Chair Williams** asked the following two questions: 1) If the permit should be denied, and there is indication that it might be used by another faith, what would be the typical timeframe be from your estimation of actual time that the new church would be operational and 2) Should this permit be approved, what would be the time that the homes will be available.

For question number one, Mr. Lindsay replied that the church has a Use Permit on the property. As far as occupying the property, as soon as the church would want to do that, the Use Permit has not expired and it would be an easy effort for an existing church to move in. For question number two, Mr. Lindsay went on to say that the applicant will address the Commission regarding when the homes will be ready and Mr. Lindsay reiterated that due to the faith of the existing church, they are the only ones that can enter the church and demolish it, and they do not want another faith relocating at their church.

Commissioner Hay noted that one of the letters of opposition received from staff states that the new homes will have an impact on the Milpitas Unified School District (MUSD), particularly Burnett school, and asked if the district was noticed. Mr. Lindsay replied that the district was noticed and the district had no comments. Mr. Lindsay went on to say that state law regarding new residential projects requires a school impact fee for new additions and new homes. It is estimated that the project would pay a \$100,000 school impact fee that will go to the MUSD district.

Regarding the Mitigated Negative Declaration, Commissioner Hay asked staff to clarify to the public the potential impacts.



Mr. Lindsay summarized the following impacts:

- Air quality impacts such as dust particles from the construction site. Mitigation measure is implementing best management practices for construction sites.
- Liquefaction during ground shaking. A procedure is required in the hillsides for earthquake hazards in the hillside, this is now required for residential projects in the valley floor. Additional studies are needed to demonstrate that the foundation system would be in compliance.
- Non-Point Source Pollution. Mitigation is to increase on-site infiltration of storm-water.
- Short-term construction noise impacts in the neighborhood. Mitigation is compliance with the City's noise ordinance.

Regarding the discussion earlier about Commissioner Sandhu being within 300 to 500 feet of Kennedy Drive, Commissioner Lalwani noted that the previous rule was within 300 feet and asked staff if the conflict of interest regulations have been increased from 300 feet to 500 feet, and also asked if letters were not sent out. Attorney Faubion responded that there are different scenarios and different regulations for potential conflict of interest and that the previous distance was less than 300 feet.

Commissioner Lalwani noted that staff received 22 e-mail communications and compared Charles King's letter that states he has received over 200 e-mails and needed clarification from staff. Mr. Lindsay replied that staff only received 22 e-mails and is guessing that the 200 count could be a typo.

Commissioner Lalwani asked staff where does the Sweet Spirit Christian Church hold their meetings and Mr. Lindsay replied that he did not know.

Chair Nitafoan agreed with Commissioner Giordano to give the Commissioner authority in renaming the street. He also commented that he understands why staff cannot get involved in private real estate transactions because private owners are limited to what they can do.

Mr. Lindsay commented that it is the Planning Commissions responsibility to review land uses for the area and when property changes hands, the intentions of the new property owner will be subject to the City's regulations. He went on to say that the proposed owner does meet all of the City's guidelines as a permitted use in the zoning regulations.

Attorney Faubion confirmed what Mr. Lindsay said and added, "Unless the city is a party to private individuals, who the seller wants to sell to the city's regulatory process is triggered when an application is submitted and is the City's discretion on what land use application has been submitted. If the applicant wants to demolish the church and subdivide the land, staff would have to check regulations, the state's map act and zoning regulations, the City's discretion is limited".

Chair Nitafoan introduced Tom Quaglia, the applicant.

**Applicant Tom Quaglia with the Riding Group**, 99 Almaden Boulevard, San Jose, proposes to develop the property per the existing general plan. He commented that a neighborhood meeting was held and the property owners were in attendance. He noted that the church has no intention of having another church group coming in. The Riding Group is buying the piece of land, and if he gains Planning Commission and City Council approval, then it will take about 14 to 15 months for build out of the homes.

Chair Nitafan opened the public hearing.

**Don Peoples, 529 South Main street**, representing himself, commented that the existing church has been well supported in this community, and has moved on to a larger area. He is concerned that it is very difficult for churches to locate in town. He is very involved in downtown and knows that there are several churches that want to locate there. He feels that there is already a shortage of parking in downtown and that the existing site should be given first priority to the church and the community will not be well served to the demolition of this church. His son attends Burnett school and there is not enough parking to accommodate the area. He urges the Commission to support the church.

**Tim Howard, 491 Simus**, is concerned about how long the building process will take and if staff will be involved in the architectural review. He feels that it would look funny to have 19 different homes and asked if there are any construction penalties for construction workers to hammer away in the morning time or on the weekends.

**Don, 1797 Fairhill Drive**, representing himself and neighbors, wants to know what the motivation is for building more homes in the area. He feels that there are already enough homes and too much traffic. He also asked how many churches are within a 6 to 8 mile radius. He is opposed to project and doesn't want to see any more problems to the City.

**Joe Oliva, Principal Transportation Planner**, 238 Ayer Lane, noticed that there are some mature trees in the existing location along Kennedy Drive and is concerned that the trees will be removed. He urges staff to preserve as many trees as possible.

## **Close Public Hearing**

**Motion** to close the public hearing.

M/S: Hay/Giordano

AYES: 6

NOES: 0

Chair Nitafan asked staff to clarify the questions and concerns from the public.

In response to the concerned resident regarding the length of development, Mr. Quaglia commented that the homes will be built at the same time and that there will be a notice with the phone number of the job superintendent on site. He hopes that working hours will not be violated and that the construction crew will abide by all regulations.

In response to the concerned resident regarding the motivation for building new homes, Mr. Quaglia commented that the development is being proposed according to the general plan and land use policies and there is no motivation.

In response to Mr. Oliva regarding the mature trees, Mr. Quaglia responded that the trees along Kennedy Drive will be removed and replaced. Chair Nitafan asked if the Commission decided to retain the trees, would the applicant agree and the applicant responded that the trees would have to be removed because of utilities.

Mr. Lindsay added that staff supports the removal of the trees so that the utilities could be under grounded. Mr. Quaglia added that 40 additional trees will be installed.

In response to the concerned resident regarding traffic issues, Mr. Lindsay responded that there is expected to be an increase of 17 additional trip in the morning and 19 additional trips in the evening.

In response to the concerned resident regarding the nearest churches within a 6 to 8 mile radius, Mr. Lindsay did not have the information available.

Mr. Oliva added that during the operation of the school there is crossing guard at Fanyon that helps the children cross the street.

Commissioner Galang asked if the Commission is able to review the architectural design element. Mr. Lindsay commented that R1-6 zoning doesn't include the City's ability to review the design but does have standards that they will have to comply to the zoning district. Staff will ensure that the building is in compliance.

Commissioner Galang asked if there will be after school enforcement and Mr. Lindsay replied that that wasn't identified as a need and staff doesn't see it as a problem.

After evaluating the project area, Commissioner Giordano commented that there are approximately 350 to 400 homes and with 19 homes being added, it will have minimal impact. She noted that the homes are compatible with the neighborhood. There have been other challenging fill in projects, and this project fits well with the neighborhood. She supports the project. She also suggested that Karen Kahai (who passed away recently) be one of the names that staff chooses for the new street.

Commissioner Lalwani asked if there is anyone from the audience representing Sweet Spirit church and if so, have they contacted the property owner. There was no reply from the audience.

Commissioner Hay commented that staff is not able to make decisions when it comes to property rights and in this case, there isn't much of a conflict within those two sides of the issue, and the project is consistent with the zoning and general plan. The church has made a decision to sell the property and demolish the building. With that reason, he is supporting the project.

Vice Chair Williams expressed that he is in favor of the project to provide housing for the community, but is concerned will the amount of garbage that is accumulating at the site. He drove by the property and noticed that there is a pile of already existing trash and is concerned that it will become a magnet for more garbage. Ms. Heyden noted that staff will call BFI to have the trash removed.

Chair Nitafan commented that the City has very limited real estate and that every little area in Milpitas is precious. He agrees with fellow commissioners and views the development as being consistent, compatible, and the best use of the area. It will help increase our housing needs that are required by the state. He is in favor of the project

**Motion to approve Vesting Major Tentative Map (P-MA2003-2), Mitigated Negative Declaration (P-EA2003-8) and USE PERMIT NO. 157** with all of the conditions and recommendations noted in the staff report along with the a new condition that the street be renamed and brought back to approval at the next meeting.

M/S: Giordano/Galang

AYES: 6

NOES: 0

Attorney Faubion asked to be excused at Chair Nitafan excused her at 8:09 p.m.

Commissioner Sandhu returned to the dais at 8:10 p.m.

**2. VTA'S VTP 2020 LONG RANGE TRANSPORTATION PLAN UPDATE (P-AD2003-13):** Request to prioritize the list of the City's transportation projects for inclusion in the Santa Clara Valley Transportation Plan (VTP) 2020. *Staff Contact: Joe Oliva, (408) 586-3290.*

**Joe Oliva, Principal Transportation Planner,** presented a request to prioritize the following projects:

- Calaveras Boulevard Widening and Operational improvements
- Montague Expressway/Capitol Avenue Grade Separation
- Dixon Landing Road/North Milpitas Boulevard Intersection improvements
- Dixon Landing Road Widening

He noted that these projects are for inclusion in the Santa Clara Valley Transportation Plan (VTP) 2020 and recommended to Council prioritization of the transportation projects.

Commissioner Hay asked where the 80 million in funding is coming from. Mr. Oliva responded that there is a portion coming from the local streets and county roads fund that has an allocation of over \$400 million over a time frame of 20 years. Many cities and local districts are trying to become eligible for funding and would have to come up with a 12% match. He went on to say that the City has submitted the above recommendations and will probably get one or two of these projects funded. Staff is recommending that the Calaveras Boulevard widening be given first priority.

As a member of the City Council Transportation Subcommittee, Commissioner Hay commented that the 880/680 cross connector has been envisioned as a series of connections such as widening Calaveras Boulevard to six lanes and widening Mission Boulevard and Auto Mall Parkway. He said that negotiations have been going back and forth with the City of Fremont and feels that Fremont is not interested in investing their time and money to move forward. He supports widening Calaveras Boulevard.

Mr. Oliva commented that the City of Fremont is working on other commitments and does not see the cross connector happening anytime in the future.

Vice Chair Williams asked if the City of Fremont is going to continue with their plans of extending Fremont Boulevard to Dixon landing Road, connecting to McCarthy Boulevard and Mr. Oliva said that he doesn't see that happening anytime in the near future, especially because of the economy.

Regarding public safety, Vice Chair Williams asked if staff plans on connecting Curtis Avenue to Yosemite and Mr. Oliva responded that plans are going on about adding a pedestrian/bicycle crossing through Curtis Avenue and near Solelectron's property over the Union Pacific Railroad. The city's desire is to turn Curtis Avenue into a residential street since the Parc North project will be taking access there.

Commissioner Giordano asked what comments were made at the Community Advisory Commission meeting. Mr. Oliva stated that the majority of concerns were related to pedestrian and bicycle safety and that currently, there is a four-foot sidewalk that has to accommodate both pedestrians and bicycles.

In regards to the Dixon Landing Road widening, Commissioner Giordano asked what would happen to the current railroad crossing. Mr. Oliva responded that one set of tracks have been purchased from VTA for BART and there are different vertical alignments involved, one being to build a bridge structure or bringing BART underneath, or leaving BART at grade. Those are the design options being carried forth.

In regards to safety, Commissioner Giordano asked if the railroad track gates would be expanded and Mr. Oliva responded, "Yes".

In regards to the recommended projects for prioritization, Commissioner Lalwani asked about potential problems concerning lack of funds. Mr. Oliva responded that the City has to go through a public input process to prioritize the list of projects to be incorporated into the plan, and decide which projects are most important to the City,

Commissioner Lalwani asked what would happen if the City couldn't come up with \$4.8 million dollars and Mr. Oliva responded that the VTA plan is updated every three years, so staff can reprioritize than if needed, so it doesn't preclude the city from moving forward.

For the Calaveras Boulevard widening, Commissioner Hay asked how is construction expected. Mr. Oliva said that they would have to remove both of the structures and rebuild them, meaning, two lanes would be removed, and traffic would have to shift over.

Regarding the priority list, Chair Nitafan feels that the most benefit to the City would be the following recommendations due to being within reachable goals.

- Calaveras Boulevard Widening and Operational improvements
- Dixon Landing Road/North Milpitas Boulevard Intersection improvements
- Montague Expressway/Capitol Avenue Grade Separation
- Dixon Landing Road Widening

Chair Nitafan opened the public hearing.

**Rob Means, 1421 Yellowstone**, feels that transportation projects do too little for residents, being that the majority of residents are either too young or too old to drive. He supports alternative transit such as an elevated electric feeder system that would support people instead of automobiles. He invites the public to come to the Milpitas Town Center to look at the personal transit system that should be discussed for future alternative transportation projects.

Commissioner Galang asked what a personal rapid transit system is and Mr. Means responded that it is a lightweight elevated electric driven technology, that is the size of an automobile. When an individual wants to go to a station, they get off a main line, while the rest of the cabs continue on the main line. He feels this transit system is the solution for the economics, social health and environmental impacts and service for people.

**Ed Connor, 1515 North Milpitas Boulevard**, feels that the City should look at modern methods of alternate transit, preferably a monorail system like the one located in Montreal. It uses a magnetic field that doesn't require electricity and is perfectly safe. It is ultra modern, can hold 15 to 30 people and there is no sound. He feels that the City should like at alternative modes of transportation.

### **Close Public Hearing**

**Motion** to close the public hearing.

M/S: Hay/Williams

AYES: 7

NOES: 0

Commissioner Galang asked if the Calaveras Boulevard widening will impact the shopping center at the northeast corner of Calaveras going westbound. Mr. Oliva responded that an auxiliary lane would be put it to make the roads safer and that there could be potential problems.

Based on the public hearing, Chair Nitafan asked if the Commission is limited to making a decision. Mr. Oliva responded that VTA is asking for a priority list for local streets and country roads. Other forms of transportation and technologies are currently not on the list.

Chair Nitafan asked if we could use City funds for future technologies. Mr. Oliva responded, "Yes", and that currently, the federal government gives money for demonstration projects, which can be very competitive.

In response to the concerned residents regarding alternative transportation, Commissioner Hay commented that the automobile is part of our society for decades. The city is the gateway to Silicon Valley, as long as we have the jobs housing balance, all these vehicles come through Milpitas from other parts of the bay area. Regional traffic is impacting local traffic. We have to address the capacity problem. He is supporting staff's recommendation.

**Motion** to make the following recommendations to council to include in the VTA's VTP 2020 Plan.

- Calaveras Boulevard Widening and Operational improvements
- Dixon Landing Road/North Milpitas Boulevard Intersection improvements
- Montague Expressway/Capitol Avenue Grade Separation
- Dixon Landing Road Widening

M/S: Lalwani/Williams

AYES: 6

NOES: 1 (Hay – due to supporting staff's original recommendation)

**IX.  
NEW BUSINESS**

**3. PRESENTATION OF PROPOSED CITY LIBRARY LOCATION ON MAIN STREET:** City staff presentation regarding the city's new library location at the historic elementary school site at the southwest corner of N. Main Street and Weller Lane. *Staff Contact: Mark Rogge, (408) 586-3163*

Chair Nitafan introduced Agenda Item No. 5 under New Business.

**Mark Rogge, Principal Engineer,** presented a PowerPoint presentation of the City's proposed new library location at the historic elementary school site at the southwest corner of North Main Street and Weller Lane.

Commissioner Galang stated that he supports the two projects and asked if the Planning Commission will be reviewing the project design. Mr. Rogge commented that there is a preliminary design that will have to go forward to the Library Subcommittee and afterwards, the Planning Commissioner would be able to review.

Commissioner Galang suggested that if it is possible that the quiet study room be placed at the back, not near the front main entrance door and Mr. Rogge said that it would be considered as an option.

Commissioner Giordano asked what is the life expectancy for both of the projects and Mr. Rogge replied that it is a 20-year expectancy.

Commissioner Lalwani expressed concern that the seniors might encounter problems crossing at Milpitas Boulevard and Mr. Rogge assured her that staff will be looking at the overall circulation and make sure that there is good access and good cross walks.

Commissioner Sandhu asked about the mold problem at the Senior Center and if it has been resolved. Mr. Rogge stated the staff is concerned about health and safety and will be evaluating both buildings to make sure they are completely clean. The roof is very leaky and mold grows, and staff has to make sure that the roof is complete and will be checking for lead. Staff has hired industrial hygienists to do a thorough check up of the buildings.

Commissioner Sandhu asked if staff has received permission to relocate to the Senior Center. Mr. Rogge commented that staff has hired a historical architect to make sure the building is being honored and preserved to keep it on the national registry list.

Commissioner Sandhu asked if staff is adhering to the project schedule and Mr. Rogge responded that staff has a lot of work ahead such as under grounding the utilities and street improvements. Staff is looking at about five years to complete the project.

Commissioner Hay commended staff on their presentation and commended Mr. Rogge and Greg Armendariz for coming up with the idea for relocating the library on Main Street and that it has generated excitement in the community.

Mr. Rogge said that this concept was attributed to the success of the Midtown Plan and the success from the Planning Commission and the Planning Department. Because of the Midtown Plan, the library concept fits in well.

Vice Chair Williams commented that he is glad that the overhead communication cables will be moved underground along Main street and asked staff if the maintenance yard near the Senior Center is going to be kept there. Mr. Rogge commented that staff is looking at a more appropriate location for the yard.

Chair Nitafan suggested that staff consider the BART location, traffic, and vibration from the railroad and Mr. Rogge agreed.

**X.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:38 p.m. to the next regular meeting of August 27, 2003.

Respectfully Submitted,

James Lindsay  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary



**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**July 23, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Nitafan** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Nitafan, Williams, Galang, Giordano, Hay, Lalwani and Sandhu  
Absent: None  
Staff: Heyden, Lawson and Rodriguez

**III.  
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

**Diane McDonough, Executive Board Member, Milpitas Chamber of Commerce**, handed out posters for the upcoming Milpitas Art and Wine Festival that will be held on August 16-17, 2003.

**IV.  
APPROVAL OF MINUTES  
July 9, 2003**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of July 9, 2003.

**Motion** to approve the minutes as submitted.

M/S: Lalwani/Williams

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

**Tambri Heyden, Planning Manager**, introduced Kristina Lawson, Assistant City Attorney, in attendance at the Planning Commission meeting substituting for Kit Faubion, City Attorney, who is on vacation.

**Commissioner Lalwani** announced that she has been selected as a community leader to discuss the Patriot Act on Wednesday, July 30, 2003, at the Palo Alto Arts Center hosted by the *San Jose Mercury News* and Santa Clara University.

**VI.  
PLANNING  
COMMISSION CHAIR  
SERVICE PLAQUE TO  
PAUL HAY**

Chair Nitafan presented a plaque to **Commissioner Hay, former Planning Commission Chair**, for his excellent leadership as Chair from July 1998 to July 2001 and from July 2002 to July 2003.

Commissioner Hay said that it has been an honor to serve with fellow commissioners and serve the City. He said there have been challenges, but it has also been a lot of fun. He looks forward to serving as a Commissioner and also to support new Chair, Dem Nitafan.

**RECESS**

A short recess was called while refreshments were served in honor of Paul Hay's service as Chair.

Chair Nitafan called the meeting to order at 7:22 p.m.

**VII.  
APPROVAL OF  
AGENDA**

Chair Nitafan called for approval of the agenda.

Ms. Heyden noted that staff is requesting that Item No. 4 on the agenda (Use Permit No.P-UA2002-28 (P-AD2003-11) Manila-Natori Restaurant, be continued to the September 10, 2003 Planning Commission meeting since staff has just received a new Use Permit application from the applicant since the staff report was prepared.

**Commissioner Giordano** asked staff if the people in the audience who are interested in the Manila-Natori agenda item are aware of the continuance.

Ms. Heyden said “No”, since the decision to recommend continuance was made in the day. However, the applicant requested the continuance.

**Motion** to approve the agenda with the changes indicated.

M/S: Hay/Sandhu

AYES: 7

NOES: 0

**VIII.  
CONSENT CALENDAR  
Item Nos. 1, 2, 3 and 4**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Ms. Heyden requested that Item No. 4 (Use Permit No.P-UA2002-28 (P-AD2003-11) Manila-Natori Restaurant be added to the consent calendar.

The Commissioners raised no objection and after the hearing voted in favor of this recommendation with approval of the consent calendar.

Chair Nitafan opened the public hearing.

**Nathapong Shugan, speaking on behalf of Thai House, 177 W. Calaveras Blvd., and King Crab, 269 W. Calaveras Blvd.,** relative to agenda Item No. 1, is concerned about Lee’s Sandwiches (Use Permit No. P-UP2003-24) opening a new restaurant because of parking and traffic issues that the business might potentially have. He said that given the current situation of the economic downturn, there are problems already and not enough parking during lunchtime. He is concerned that customers will be turned away for faster service and doesn’t want to see that problem happening in the neighboring area.

After the Chair’s request for staff to comment on the speaker’s remarks, Ms. Heyden noted that on page 4 of 10 in the staff report, staff discusses the parking issues and notes the parking study survey that was surveyed during the lunch hour peak parking demand indicates that there are 100 parking spaces available that are not being utilized during lunch. She noted also that those spaces are spread all over the property meaning that customers may not be able to park directly in front of the business they want to patronize.

**Close Public Hearing  
Item Nos. 1, 2, 3 and 4**

**Motion** to close the public hearing on Consent Item Nos. 1 and 2 and continue Item. No. 3 to August 13, 2003 and Item No. 4 to September 10, 2003.

M/S: Hay/Williams

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1, 2, 3 and 4.

**\*1 USE PERMIT NO. P-UP2003-24:** A request for a new, 40-seat take-out restaurant and bakery (Lee's Sandwiches) without replacing two (2) required parking spaces lost by constructing a garbage enclosure at 275 West Calaveras Boulevard, zoned C2 – General Commercial district (APN 022-25-042) PJ No. 2336. Applicant: Jenny Le Truong. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with conditions)*

**\*2 USE PERMIT NO. P-UP2003-25:** A request to operate a women's weight loss center with circuit training (Curves) in an existing 3,000 square foot tenant space at 487 Los Coches Street, zoned MP - Industrial Park (APN 86-28-032) PJ No. 2337. Applicant: Stacy Vierra. Project Planner: Staci Pereira, (408) 586-3278. *(Recommendation: Approval with conditions)*

**\*3 USE PERMIT AMENDMENT NO. P-UA2003-4:** A request to amend Use Permit No. 1023 to add live entertainment, extend hours of operation on weekends, and permit serving alcoholic beverages at an existing restaurant (Royal City) located at 90-94 S. Abel Street without adding required parking for these new uses at Abel Plaza, zoned MXD-TOD - Mixed Use with Transit Oriented Development overlay (APN 22-40-045) PJ No. 2316. Applicant: Young Thai (Royal City Restaurant). Project Planner: Staci Pereira, (408) 586-3278. *(Recommendation: Continue to August 13, 2003)*

**\*4 USE PERMIT NO. P-UA2002-28 (P-AD2003-11):** Expiration of a temporary use permit for karaoke and dancing (live entertainment) in a nightclub/ballroom setting at the Manila-Natori Restaurant at 579 S. Main Street, zoned MXD - Mixed Use district (APN: 086-11-012). Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Continue to September 10, 2003)*

M/S: Hay/Giordano

AYES: 7

NOES: 0

**IX.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:33 p.m. to the next regular meeting of August 13, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**July 9, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Hay** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams  
Absent: None  
Staff: Heyden and Rodriguez

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
June 25, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of June 25, 2003.

**Commissioner Giordano** noted that there was no adjournment time.

**Tambri Heyden, Planning Manager**, indicated that staff will recheck the adjournment time and make the correction.

**Motion** to approve the agenda with the noted correction.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

There were no announcements from staff.

**Vice Chair Lalwani** gave great thanks to the Milpitas Downtown Association for coordinating the 4<sup>th</sup> of July street faire and noted they will continue to have regular meetings the first Thursday of the month.

**Commissioner Giordano** mentioned that she spoke to Al Garcia, Chair of the CAC about the Neighborhood Night Out event on August 12, 2003, and he said he is getting double the response from last year. Interested participants can call Sergeant Steven Petrakovitz at 408-586-2527.

**VI.  
APPROVAL OF  
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes by staff.

Chair Hay proposed to move Agenda Item No. 7, Election of Officers, to the end of the agenda.

The Commissioners agreed.

**Motion** to approve the agenda as amended.

M/S: Hay/Nitafan

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 1, 2 and 3.**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes by staff.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 1, 2 and 3.**

**Motion** to close the public hearing on Consent Item Nos. 1, 2 and 3.

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1, 2 and 3.

**\*1 USE PERMIT NO. P-UP2002-45 and 'S' ZONE AMENDMENT NO. P-SA2002-108:** A request for the installation of six (6) telecommunication antennas and associated equipment cabinets behind existing screening on the rooftop of the building located at 1545 Barber Lane, zoned MP - Industrial Park (APN: 086-03-038). Applicant: AT&T Wireless. Project Planner: Kim Duncan, (408) 586-3283. (PJ # 2313). *(Recommendation: Approval with conditions.)*

**\*2 USE PERMIT NO. P-UP2003-22:** A request to operate an auto parts store in a 2,400 square foot tenant space at 1370 Minnis Circle, zoned HS - Highway Services district (APN 022-02-039). Applicant: Guadalupe Ortiz. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2334). *(Recommendation: Approval with conditions.)*

**\*3 MINOR TENTATIVE PARCEL MAP NO. P-MI2003-2:** A request for a minor tentative parcel map to convert three buildings to condominium ownership at 835, 790 and 875 Yosemite Way, located in Yosemite Business Park, zoned M2 - Heavy Industrial (APN's: 86-31-064, -068 and -067). Applicant: WP Investments. Project Planner: Staci Pereira, (408) 586-3278. (PJ#3117). *(Recommendation: Approval with conditions.)*

M/S: Giordano/Nitafan

AYES: 7

NOES: 0

**VIII.  
ELECTION OF  
OFFICERS**

Chair Hay turned the gavel over to Tambri Heyden, Secretary of the Planning Commission, who opened the nominations for Planning Commissioner Chair.

Chair Hay nominated Commissioner Nitafan for Chair based on Commissioner Nitafan's attendance to at least one workshop every year, his dedication, his commitment to doing the best job he can and always trying to improve his knowledge.

Commissioner Nitafan accepted the nomination.

Commissioner Sandhu nominated Vice Chair Lalwani for Chair.

Vice Chair Lalwani accepted the nomination.

## **Close Public Hearing**

**Motion** to close nominations for Chair.

M/S: Hay/Giordano

AYES: 7

NOES: 0

Ms. Heyden took a vote for each nominee and Commissioner Nitafan was elected Planning Commission Chair with 5 votes over 2 votes cast for Vice Chair Lalwani.

Ms. Heyden opened nominations for Planning Commission Vice Chair.

Commissioner Nitafan nominated Commissioner Williams for Vice Chair based on Commissioner Williams' dedication to the Planning Commission for seven years, his efficient communication and due to him being very giving.

Commissioner Williams accepted the nomination.

Commissioner Sandhu nominated Vice Chair Lalwani for Vice Chair.

Vice Chair Lalwani accepted the nomination.

**Motion** to close nominations for Vice Chair.

M/S: Hay/Giordano

AYES: 7

NOES: 0

Ms. Heyden took a vote for each nominee and Commissioner Williams was elected Planning Commission Vice Chair with 5 votes over 2 votes cast for former Vice Chair Lalwani.

Commissioner Giordano thanked former Chair Paul Hay for chairing and serving the group and compared him to three former incredible, past chairs; Skip Skyrud, Barbara Lee and Ed Unger.

Chair Hay said that Ed Unger tutored him and thanked Debbie for the comparison.

Chair Hay said that he had an interesting year and that it is time to move along. He congratulated the new Chair and Vice Chair.

## **IX. ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:13 p.m. to the next regular meeting of July 23, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary



**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**June 25 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Hay** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams  
Absent: None  
Staff: Heyden, Pereira and Rodriguez

Ms. Rodriguez noted that Ms. Heyden, Commissioner Galang and Vice Chair Lalwani are still at the Planning Commission Subcommittee meeting.

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
June 11, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of June 11, 2003. There were no changes made.

**Motion** to approve the agenda as written.

M/S: Giordano/Sandhu

AYES: 4

NOES: 0

ABSTENTIONS: 1 (Nitafan) – Absent at the June 11, 2003 meeting.

**V.  
ANNOUNCEMENTS**

There were no announcements from staff.

Chair Hay reminded Commissioners about the Main Street 4<sup>th</sup> of July street faire.

**VI.  
APPROVAL OF  
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes by staff.

**Motion** to approve the agenda.

M/S: Sandhu/Giordano

AYES: 5

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 1 and 3**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes by staff.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing  
Item No. 3 and continue  
Item No. 1 to the August  
27, 2003 meeting.**

**Motion** to close the public hearing on Consent Item No. 3 and continue Item No. 1 to the August 27, 2003 meeting.

M/S: Giordano/Nitafan

AYES: 5

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1 and 3.

**\*1 VARIANCE NO. P-VA2003-2 AND "S" ZONE AMENDMENT NO. P-SA2003-61:** *(Continued from June 11, 2003 meeting)* A request to exceed the maximum allowed impervious surface coverage in order to accommodate wood decking and other back yard amenities for the single family hillside residence located at 510 Vista Spring Court (APN 042-30-017). Applicant: Franklin and Celina Camillo. Project Planner: Annelise Judd, (408) 586-3273. *(Recommendation: Continue to August 27, 2003 meeting)*

**\*3 USE PERMIT NO. P-UP2003-17 and 'S' ZONE AMENDMENT NO. P-SA2003-8:** *(Continued from May 28, 2003 meeting)* A request for the for the installation of twelve (12) telecommunication antennas and associated equipment cabinet on the Embassy Suites Hotel rooftop located at 901 E. Calaveras Boulevard, zoned Town Center (APN: 028-26-001). Applicant: Verizon Wireless. Project Planner: Kim Duncan, (408) 586-3283. (PJ #2246). *(Recommendation: Applicant has withdrawn application)*

M/S: Giordano/Sandhu

AYES: 5

NOES: 0

**VIII.  
PUBLIC HEARING**

**1. "S" ZONE  
AMENDMENT NO. P-  
SA2003-3:** *429 South Main  
Street. Applicant: Hien N.  
Nguyen and Nicole Thanh-  
Cam Vecchi.*

Chair Hay opened up the public hearing on Agenda Item No. 2.

**Commissioner Nitafan** abstained from discussion and voting on this item due to a conflict of interest. His business is 300 feet from this property. Chair Hay excused Commissioner Nitafan for the remainder of the evening. Commissioner Nitafan left the meeting at 7:04 p.m.

Ms. Heyden, Commissioner Galang and Vice Chair Lalwani returned to the Council Chambers at 7:05 p.m.

**Staci Pereira, Assistant Planner,** presented a request for building and site improvements associated with converting a residence to a commercial building for medical use at 429 South Main Street (APN 086-10-022), zoned MXD, Mixed Use district.

Ms. Pereira pointed out two amended conditions that read as follows:

*14. Consistent with Policy A-2.b and A-2.f of the Midtown Plan, property owner shall grant cross access through the truck turn around area to property owner to the south when that property is redeveloped, based on the mutually agreed terms and conditions between the two property owners and such that these terms and conditions do not preclude the cross access. (P)*

*19. Prior to building occupancy permit issuance, the property owner shall enter into an agreement with the City to pay the City \$17,500.00 in five equal yearly installments in lieu of undergrounding the existing overhead utilities along its frontage on S. Main Street. This agreement will be recorded on the subject property and the first installment will be due at the time of building permit occupancy issuance. (E)*

Ms. Pereira reminded the Commissioners that this project was presented at the April 23, 2003 meeting and was continued indefinitely in order for the applicant to resolve the following issues through resubmitted designs: parking, the driveway width and location, the utility pole relocation and trash enclosure.

The applicant's resubmitted plans address the above April 23<sup>rd</sup> issues, but the following minor changes are needed which the applicant agrees to:

1. A new wood trellis at the front porch.
2. An enclosed front porch.
3. Revisions to the parking lot layout.
4. A freestanding sign.
5. Inclusion of exterior light fixtures.

Major changes are needed to the resubmitted plans which the applicant agrees to:

1. Adding two more parking spaces in the parking lot and adding one in the street frontage.
2. Adding a trash enclosure on the northwest corner of the site. This will allow BFI trucks to access the enclosures and allows them to perform a hammerhead turn and exit the site without backing onto the street. It also provides large delivery trucks and other vehicles to do a 3-point turn.
3. Redesigning the curb cut to 24 feet.
4. Relocating the utility pole.
5. Handicap access from the parking lot area is needed from the sidewalk, as it is not provided from the front entrance to the sidewalk.

Ms. Pereira stated that the project now conforms to the "S" zone district requirements and the intent of the Midtown Plan's design standards and guidelines.

Based on these findings, staff recommends approval of the project as proposed.

**Commissioner Giordano** stated that most of the issues from the last meeting have been resolved but she still has concerns about traffic.

Ms. Pereira confirmed that these would be an increase in traffic.  
Chair Hay asked if the utilities are going to be undergrounded.

Ms. Pereira noted that the utilities are going to be relocated and she referenced amended condition No. 19 which states that the applicant is going to pay a fee of \$17,500.00 in five annual installments to give to the City when they start undergrounding utilities in the Midtown area.

Chair Hay asked if one of the parking spaces is on the street and how we keep from allocating those parking spaces on Main Street to other businesses.

Ms. Heyden noted that credit is given for parking that is directly in front of the business frontage, so since there is only room for one parking space given the narrow width of this lot, they are the only property that will get credit for this space.

Chair Hay asked if that particular parking space would only be allocated for this business.

Ms. Heyden indicated that although it would be allocated to this business's parking requirement, others could use the parking space.

**Vice Chair Lalwani** asked if the property owner can put the business name on the parking space and Ms. Heyden said that staff does not support that being done.

Vice Chair Lalwani asked for clarification of amended Condition No. 19 regarding the \$17,500.00 fee and asked if this is a usual practice.

Ms. Heyden stated that this fee stems from a new policy from the recently adopted Midtown Plan, which requires applicants to underground utilities. This is the second Midtown project that has come forth to the Planning Commission. She wasn't sure if the first Midtown project, Apton Plaza, had underground utility issues, and if it did, the owner has agreed to do it with their construction. Either way, with this new policy, the Commissioners will be seeing this condition more and more with future Midtown projects.

Chair Hay invited the applicant to speak.

**Nicole Thanh-Cam Vecchi, owner of 429 S. Main street**, stated that she and her husband have tried their best to meet all of the special conditions required by the City and have spent \$30,000 up to this point. They are not trying to resist this at all, but need help with relocating the utility pole. It has been six weeks since she put in an application to relocate the pole with PG&E and was recently informed that it could take several months before the work can begin. She is requesting that the Commission grant her a certificate of occupancy so that she and her husband can begin seeing patients.

Mrs. Vecchi went on to say that she will comply with all conditions such as agreeing to pay the fee to underground the utilities, decorating the frontage, completing a traffic assessment, but in regards to the hold up of the utility pole, they cannot pave the whole driveway. Staff has mentioned that this is a safety issue, but she compared Danville to Milpitas, and noticed that Danville does not have widened curbs and they don't have major accidents. She is at the mercy of PG&E and would like the City to grant them special permission for a certificate of occupancy.

Chair Hay asked if the applicant has processed their application with PG&E.

Mrs. Vecchi stated that she wrote out a check for \$750.00 made payable to PG&E but they haven't cashed the check yet. PG&E informed her that it would cost over \$10,000.00 to move the utility pole. She pleaded with the Commission for staff to put pressure on PG&E.

Vice Chair Lalwani asked the applicant if they could summarize what they need to finish the project.

Mrs. Vecchi stated again that she is asking the Commission to grant her a certificate of occupancy. They can't start paving the driveway until the pole is relocated.

Vice Chair Lalwani asked the applicant if they agree to relocate the pole and pay the fee for undergrounding the utilities and Mrs. Vecchi replied that she agrees to both conditions.

Chair Hay opened the public hearing.

There were no speakers from the audience.

#### **Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 2.

M/S: Galang/Giordano

AYES: 6

NOES: 0

Commissioner Giordano asked staff to respond to Mrs. Vecchi's concerns.

Ms. Pereira stated that the applicant is requesting to receive a temporary certificate of occupancy so they can operate their business and not relocate the pole until PG&E gets around to it. The problem with that is should a fire or something occur while they are operating, the driveway width and unpaving would not allow fire trucks or BFI trucks to access. Safety is staff's major concern.

Safety is staff's major concern.

Commissioner Giordano asked if there are any alternatives to parking such as parking on Main Street or off-site.

Ms. Heyden clarified that if the driveway isn't completed there wouldn't be access to the rear of the property where the handicap spaces are, and not completing this condition is not completing the construction of the site. Staff can offer to contact PG&E and see to getting this project expedited and put pressure on PG&E.

Ms. Heyden went on to say that it is not uncommon for several outside agency approvals be required and this is just one example where the applicant would have to obtain approval. The applicant is at the mercy of that agency's timetables and they will have to obtain approval prior to getting a building permit. Ms. Heyden indicated that the timeframe noted by PG&E would be about the same timeframe for getting a building permit and constructing. Thus staff can work on expediting PG&E's approval in the meantime.

Commissioner Giordano asked, how, by not completing the driveway portion, would it hinder access on an unpaved surface since there seems to be access to the rear of the building now.

Ms. Heyden clarified that the unpaved driveway serves a residential use and is wide enough for one-way traffic only.

Commissioner Giordano asked, why, if patrons could park at another temporary parking location along a street, why can't police or fire get to the rear of the building.

Ms. Heyden pointed out that the 429 S. Main Street is a residential driveway right now that was constructed for a single family home. Once the construction takes place to convert the building, and it is not done in conjunction with site improvements, we would have a commercial building which would create a great response problem in terms of vehicle access with a driveway that is not adequate for two-way flow.

After further discussion, Commissioner Giordano said that she doesn't understand how it would prohibit access to the rear of the building and felt that it should be sufficient for an emergency vehicle to enter the driveway. She still doesn't understand how it prevents access to the rear of the building.

Chair Hay tried to clarify the conversation between Commissioner Giordano and Ms. Heyden. He thought he heard that the applicant would complete the driveway construction with the gravel, which meant widening of the driveway and the widening of the curb cut, and graveling the driveway, so now it is two-way, but the pole is sitting at the corner, which it makes it hard to enter.

Ms. Pereira clarified that you cannot pave the driveway because the applicant would need to construct the driveway access curb cut width, but they can't finish that because of the location of the pole. Not only would the driveway not be paved, the curb cut would not be complete because of the pole. The pole would be widened to the south but not to the north.

Mrs. Vecchi stated her concern that when the building is otherwise completed and that PG&E has not come around, the building will just be left there. She pleaded again that the Commission grant her a temporary certificate of occupancy.

Commissioner Giordano asked what the driveway is going to look like.

**Mr. Hien N. Nguyen, owner of 429 S. Main Street**, said that it is going to be gravel up until the pole.

Mrs. Vecchi said that she met with the paving people and that they can pave all the way up to the pole, and then wait for PG&E to relocate the pole and widen the flare. Staff has a 24 feet requirement for the flare, and she will be short about two feet. Ambulances can come in and out and if they have to. They will put the garbage out on the sidewalk so that BFI can pick up the garbage.

Chair Hay asked when the applicant talked with PG & E and Mrs. Vecchi replied "Yesterday".

Chair Hay asked if staff has talked to PG&E and Ms. Pereira responded "No".

Ms. Pereira clarified that in discussing the issue of the temporary occupancy permit with Engineering, there is also the matter of the low hanging wires connected to the pole that would have to be removed in order for BFI and Fire to enter because of the height of their trucks. She noted that this is a special condition of approval from Engineering.

Mrs. Vecchi noted that according to PG&E these wires would be undergrounded at her expense, so it should not be an issue.

Commissioner Giordano asked if that would be done prior to the driveway and Mrs. Vecchi responded, "Yes".

Chair Hay said that there should be a condition from Fire and Engineering that the lines running from the pole to the property be undergrounded. Ms. Pereira informed that this is a special condition.

Vice Chair Lalwani stated that this is getting too technically difficult and that it would have been best if Engineering attended the meeting. She has empathy for the business owner and wants Milpitas to be known as business friendly. She made a **motion** to approve "S" Zone Amendment No. P-SA2003-3 on the basis that the Planning department agree to work with PG & E to speed up the process, and that if all the conditions are fulfilled (with the exception of the utility pole), and that Engineering says that it is safe enough, then a temporary certificate of occupancy shall be granted to the applicant so they don't have further financial drain.

Commissioner Giordano agreed with the motion but added that the temporary certificate of occupancy be limited to six months so the incomplete construction doesn't go on indefinitely.

Ms. Heyden said that she was not quite clear with the motion and has concerns of designing a temporary driveway design that hasn't had the benefit of the Engineering Department or Fire Department to look at it, even if it is on a temporary, short-term basis. Staff is committed to calling PG&E and to find out what the time schedule could be. With that information, staff will be better prepared to find a sensible solution to this problem that leaves everyone protected and doesn't compromise safety.

Vice Chair Lalwani agreed with Ms. Heyden but would rather not have the applicant come back. She thought the safety issue could be resolved with Engineering and the applicant.

Chair Hay amended the motion to add the Fire Department's review of the temporary driveway design.

Consensus was reached.

Ms. Heyden needed further clarification on the six month temporary occupancy permit and said that if Engineering and Fire determine that the temporary design of the driveway is not acceptable, then the six month temporary certificate of occupancy would not be issued.

Commissioner Giordano and Vice Chair Lalwani agreed.

**Motion** to approve "S" Zone Amendment No. P-SA2003-3 with the amended special conditions Nos. 14 and 19 handed out by the staff at the meeting and with a revision to condition 20A that shall read as follows:

"C. Remove and relocate the existing utility pole to allow for the construction of new driveway. The new driveway shall be minimum of 24 feet wide with 4 feet flares on each side. If PG&E delays in approving the pole relocation and if all other conditions are addressed and construction completed with the exception of this condition at the time the applicant requests a certificate of occupancy, a temporary certificate of occupancy for a maximum of six months may be issued if a temporary driveway that retains the pole in its current location is determined to be a safe design by the Engineering and Fire Departments. (P,PC)"

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

Chair Hay reminded Commissioners that the election of officers should be on the next meeting agenda.

Ms. Heyden also reminded the Commission that next month is the new Subcommittee rotation. Chair Hay is the alternate and Commissioner Galang and Commissioner Nitafan are regular members.

## **IX. ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:47 p.m. to the next regular meeting of July 9, 2003.



Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**June 11, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Hay** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Sandhu and Williams  
Absent: Nitafan  
Staff: Heyden and Rodriguez

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
May 28, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of May 28, 2003.

Chair Hay noted that the meeting was adjourned at 7:14 p.m.

**Motion** to approve the May 28, 2003 minutes with the noted correction.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

**V.  
ANNOUNCEMENTS**

**Tambri Heyden, Planning Manager**, announced that the American Planning Association (APA) will hold its annual 2003 state conference in Santa Barbara from September 28, 2003 through October 1, 2003 and those Commissioners interested in attending should contact Veronica Rodriguez by July 15, 2003. Ms. Heyden noted that the Milpitas Midtown Plan won a first place award with the APA Northern Chapter and winners automatically are entered into the state competition. The winner of the state competition will be announced at the conference. Also, members of EDAW and the City have submitted a proposal to present a panel discussion of the Midtown Plan at the conference, and James Lindsay will be on the panel.

Ms. Heyden noted that the Commissioners received inserts for their Municipal Code books that include the updated zoning code amendments from last September 2002. She also noted that the Commissioners can bring their books to the next meeting and Veronica Rodriguez will insert the new material for them.

Chair Hay noted his excitement that the 1<sup>st</sup> place award for the Midtown Plan has automatically gone to the state level and also mentioned how he and Commissioner Williams accepted the award and presented it to the Council on May 20, 2003.

**Commissioner Sandhu** announced that he was elected Vice Chair for the Santa Clara County Parks and Recreation Commission on June 4, 2003. Chair Hay congratulated Commissioner Sandhu.

**Vice Chair Lalwani** announced that the Downtown Association is having a street fair meeting June 12, 2003 at 6 p.m. at 529 South Main Street for the 4<sup>th</sup> of July street fair and all are welcome to participate.

**Commissioner Giordano** thanked Don Peoples, Acting President of the Milpitas Downtown Association, for the exciting meetings that have been taking place. Commissioner Giordano attended one of the meetings and there were 40 people in attendance. She thanked the association for being a viable part of the development of downtown. She also mentioned that she attended the Filipino Fiesta and thanked the Filipino Association for a wonderful evening of dancing and festivities.

Chair Hay attended the Filipino Fiesta and said that he enjoyed himself and that it was a wonderful celebration.

**VI.  
APPROVAL OF  
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes by staff.

**Motion** to approve the agenda.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 1, 2, 3, 4, 5, 6, 7  
and 8.**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Commissioner Williams requested that Item No. 8 be added to the consent calendar and there were no objections by the Commission.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, 3, 4, 5, 6, 7 and 8.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 1, 2, 3, 4, 5, 6 and  
8. Item No. 7 to be  
continued to the June 25,  
2003 meeting.**

**Motion** to close the public hearing on Consent Item Nos. 1, 2, 3, 4, 5, 6 and 8 and continue Item No. 7 to the June 25, 2003 meeting.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1, 2, 3, 4, 5, 6, 7 and 8.

**\*1 USE PERMIT NO. P-UP2003-18:** A request to operate a grocery store (Manila Oriental Foods) in an existing 1,380 square foot retail space in Calaveras Plaza at 179 West Calaveras Boulevard, zoned C2 – General Commercial district (APN 022-25-048). Applicant: Lucita Finuliar. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2333). *(Recommendation: Approval with conditions)*

- \*2 USE PERMIT AMENDMENT NO. P-UA2003-7 and S-ZONE AMENDMENT (P-SA2003-23):** A request to add 1,700 square feet and 84 seats (72 in the dining area and 12 in the waiting area) to the existing King Crab restaurant at Calaveras Plaza without adding the 25 parking spaces required for the building expansion at 269 West Calaveras Boulevard, zoned C2 - General Commercial district (APN 022-25-041). Applicant: Peter Chan. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2322). *(Recommendation: Approval with conditions)*
  
- \*3 USE PERMIT AMENDMENT NO. P-UA2002-8:** *(Continued from May 28, 2003 meeting)* A request to add 17 seats (12 to the dining room and 5 in the waiting area) and beer and wine sales at an existing restaurant (Tofu House) without adding the six (6) parking spaces required for the expansion at 231 Calaveras Boulevard, zoned C2 - General Commercial district (APN 022-25-041). Applicant: Sung Ho Yoon. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2245). *(Recommendation: Approval with conditions)*
  
- \*4 USE PERMIT NO. P-UP2003-12 AND 'S' ZONE AMENDMENT NO. P-SA2003-44:** A request to operate a 1,792 square foot fast food restaurant with 22 seats in an existing tenant space and install a new exterior door at Ulfert's Center at 678 Barber Lane, zoned C2 - General Commercial (APN: 088-01-035). Applicant: Eric Au. Project Planner: Staci Pereira, (408) 586-3278. (PJ # 2325) *(Recommendation: Approval with conditions)*
  
- \*5 USE PERMIT NO. P-UP2003-10 AND 'S' ZONE AMENDMENT NO. P-SA2003-43:** A request to operate a 1,200 square foot restaurant with 18 seats in an existing tenant space and install a new exterior door at Ulfert's Center at 680 Barber Lane, zoned C2 - General Commercial (APN: 088-01-035). Applicant: Eric Au. Project Planner: Staci Pereira, (408) 586-3278. (PJ # 2323) *(Recommendation: Approval with conditions)*
  
- \*6 USE PERMIT NO. P-UP2003-11 AND 'S' ZONE AMENDMENT NO. P-SA2003-64:** A request to operate a 1,200 square foot fast food restaurant with 12 seats in an existing tenant space and enlarge the existing trash enclosure at Ulfert's Center at 660 Barber Lane, zoned C2 - General Commercial (APN: 088-01-035). Applicant: Eric Au. Project Planner: Staci Pereira, (408) 586-3278. (PJ # 2324) *(Recommendation: Approval with conditions)*
  
- \*7 VARIANCE NO. P-VA2003-2 AND 'S' ZONE AMENDMENT NO. P-SA2003-61:** A request to exceed the maximum allowed impervious surface coverage in order to accommodate wood decking and other back yard amenities for the single family hillside residence located at 510 Vista Spring Court (APN 042-30-017). Applicant: Franklin and Celina Camillo. Project Planner: Annelise Judd, (408) 586-3273. *(Recommendation: Continue to June 25, 2003 meeting)*

**\*8 ZONING ORDINANCE TEXT AMENDMENT (P-ZT2003-2) AND ENVIRONMENTAL IMPACT ASSESSMENT NO. P-EA2003-6:** Proposed Ordinance No. 38.762, an amendment to the zoning ordinance to clarify with which principal uses accessory massage services are allowed in the city, and a related draft negative declaration. Applicant: City of Milpitas. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Recommend to Council approval of the Negative Declaration (EIA No. P-EA2003-6) and adoption of Ordinance No. 38.762 to amend the Zoning Ordinance (P-ZT2003-2) for accessory massage uses)*

M/S: Giordano/Lalwani

AYES: 6

NOES: 0

## **VIII. ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:11 p.m. to the next regular meeting of June 25, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**May 28, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Hay** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams

Absent:

Staff: Lindsay and Rodriguez

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

**Al Garcia, CAC Chair, 1134 Ridgemon Drive**, encouraged fellow Commissioners and the public to participate in the Neighborhood Night Out on August 12, 2003. The theme is building neighborhood spirit to solve issues and complaints and help each other in times of emergencies. Mr. Garcia stated that he is the point of contact and that Officer Steve Petrakovitz can also be contacted at 408-587-2527.

Commissioner Giordano asked how neighbors will be notified about the Night Out and Mr. Garcia said that the best way is word of mouth and inviting neighbors door-to-door.

Chair Hay stated he will be participating in the Neighborhood Night Out and encouraged other Commissioners to participate.

**IV.  
APPROVAL OF MINUTES  
May 14, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of May 14, 2003.

There were no changes to the minutes.

**Motion** to approve the May 14, 2003 minutes as submitted.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

**James Lindsay, representing Planning Department staff**, in response to Commissioner Giordano's request from the March 26, 2003 meeting from a concerned resident regarding speeding on Heath Street, pointed out the memorandum issued by the Traffic Engineer that indicated that enforcement was initiated to reduce speeding and that if there are any concerns to please contact Arlene DeLeon, Traffic Engineer at 408-586-3335.

**Commissioner Giordano** thanked staff for researching the matter and mentioned that she would give a copy of the memorandum to the resident. She also thanked staff for sending her to the UC Davis Extension class (Role of the Planning Commissioner), and encouraged other Commissioners to attend.

**Vice Chair Lalwani** announced that a business trade show will be held at the Crowne Plaza Hotel in Milpitas on May 29, 2003 at 5 p.m. and that that all are welcome to attend and there is no entrance fee.

**Commissioner Galang** announced that the Filipino Association will celebrate the Annual Filipino Multicultural Fiesta on Saturday June 7, 2003 at the Milpitas Community Center from 2 p.m. to 8 p.m. and there will be social dancing from 8 p.m. to midnight. The event is free and food will be sold at reasonable prices.

**Commissioner Nitafan**, also a member of the Filipino Association, encouraged the public to attend the event.

**Commissioner Sandhu** asked if there will be a Fourth of July parade this year and Mr. Lindsay said that he wasn't sure and would respond back to Commissioner Sandhu.

## **VI. APPROVAL OF AGENDA**

Chair Hay called for approval of the agenda.

No changes by staff.

**Motion** to approve the agenda.

M/S: Lalwani/Nitafan

AYES: 7

NOES: 0

## **VII. CONSENT CALENDAR Item Nos. 1, 2, 3, 4, 6, 7, 8 and 9**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar. There were no changes made.

Mr. Lindsay noted that the applicant has requested Item No. 5 (USE PERMIT NO. P-UP2003-17 and 'S' ZONE AMENDMENT NO. P-SA2003-8) be continued to the June 25, 2003 meeting, and requested that the recommendation be changed from denial to continuance.

In response to Commissioner Giordano's question on why the applicant has requested continuance, Mr. Lindsay noted that the applicant wants to redesign the project and needs more time.

Commissioner Giordano needed clarification on Item No. 2 (USE PERMIT NO. P-UP2003-13) condition no. 5 noted below, and asked how this is implemented.

*5. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the garbage bins and any other procedures that would assist the business in complying with all state and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P)*

Mr. Lindsay noted that this is something the business owner is required to do and implementation is verified through site visits and/or complaints about trash enclosure or garbage disposal problems.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, 3, 4, 5, 6, 7 and 8.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 1, 2, 3, 4, 7 and 8.  
Item No. 5 to be continued  
to the June 25, 2003  
meeting and Item No. 6 to  
be continued to the June  
11, 2003 meeting**

**Motion** to close the public hearing on Consent Item Nos. 1, 2, 3, 4, 7 and 8 and continue Item No. 5 to the June 25, 2003 meeting and Item No. 6 to the June 11, 2003 meeting.

M/S: Lalwani/Nitafan

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9.

- \*1 USE PERMIT NO. P-UP2003-15:** A request to operate a grocery store in an existing 1,050 square foot retail space in Milpitas Square at 272 Barber Court, zoned C2 – General Commercial district (APN 86-01-043). Applicant: Ching-Lin Chang. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2329). *(Recommendation: Approval with Conditions)*
- \*2 USE PERMIT NO. P-UP2003-13:** A request to operate a Chinese fast food restaurant and bakery, New Hwong Kok Bakery, with 8 seats in an existing 1,501 square foot retail space in Crescent Square at 1705 N. Milpitas Blvd., zoned C1 - Neighborhood Commercial district (APN 22-02-049). Applicant: Hau-Ching Liao. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2331). *(Recommendation: Approval with Conditions)*
- \*3 USE PERMIT NO. P-UP2003-14:** A request to operate a printing shop using conventional offset printing presses in an existing 13,843 square foot tenant space at 1090 S. Milpitas Blvd., zoned M2 - Heavy Industrial district (APN 86-30-38). Applicant: Danny Luong. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2327). *(Recommendation: Approval with Conditions)*
- \*4 TIME EXTENSION (P-TE2003-3):** A request for a one time, 18-month time extension of a previously-approved Site and Architecture Review for demolition of existing structures and construction of 2 new, two-story research and development/offices, totaling 80,000 square feet, at 985 Montague Expressway, zoned M2, Heavy Industrial district (APN: 086-32-020). Applicant: WPI/JCI LLC. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*
- \*5 USE PERMIT NO. P-UP2003-17 and 'S' ZONE AMENDMENT NO. P-SA2003-8:** A request for the installation of twelve (12) telecommunication antennas and associated equipment cabinet on the Embassy Suites Hotel rooftop located at 901 E. Calaveras Boulevard, zoned Town Center (APN: 028-26-001). Applicant: Verizon Wireless. Project Planner: Kim Duncan, (408) 586-3283. (PJ #2246). *(Recommendation: Continue to the June 25, 2003 meeting)*
- \*6 USE PERMIT NO. P-UA2002-8:** *(Continued from April 9, 2003)* A request for beer and wine sales and a reduction in the number of parking spaces required by the zoning code in conjunction with a request to add 12 seats to an existing 37-seat Tofu House restaurant. (APN 022-25-041). Applicant: Sung Ho Yoon. Project Planner: Troy Fujimoto 586-3287. (PJ#2245) *(Recommendation: Continue to June 11, 2003)*



- \*7 USE PERMIT AMENDMENT P-UA2002-11:** Six-month follow-up review regarding extension of business hours and live entertainment (karaoke) at the Lutong Pinoy Filipino Cuisine restaurant, located at 1245 Jacklin Road. (APN 29-9-57). Applicant: Lutong Pinoy Filipino Cuisine. Project Planner: Annelise Judd, (408) 586-3273. *(Recommendation: Note receipt and file)*
- \*8 USE PERMIT NOS. P-UA2003-5 AND P-UA2003-10 AND "S" ZONE AMENDMENT NO. P-SA2003-12:** Request to amend previous use permits and site and architectural approvals for 9 telecommunication antennas housed in an additional building story for approval of 12 antennas and associated equipment housed in a proposed 256 square foot clock tower, 62'-10" in height at 1000 Jacklin Road (APN: 28-05-015) and the related Negative Declaration. Applicant: AT&T Wireless. Project Planner: Staci Pereira, (408) 586-3278. (PJ#2286) *(Recommendation: Approval with Conditions)*
- \*9 RESOLUTION NO. 493 (P-AD2003-7):** Adoption of a Resolution finding the proposed purchase of properties described as APN Nos. 86-11-013, 86-10-025, and a portion of 86-05-009 by the Redevelopment Agency is consistent with the General Plan. Staff Contact: James Lindsay, 586-3274. *(Recommendation: Adopt Commission Resolution)*

M/S: Giordano/Lalwani

AYES: 7

NOES: 0

## **VIII. ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:14 p.m. to the next regular meeting of June 11, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**May 14, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

**Chair Hay** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams  
Absent: None  
Staff: Faubion, Heyden, Lindsay, Rodriguez and Wong

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers.

**IV.  
APPROVAL OF MINUTES  
April 23, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of April 23, 2003.

**Vice Chair Lalwani** referenced Page 1 of the minutes and changed India to *India Community Center at 555 Los Coches*.

**Commissioner Giordano** referenced Page 11 of the minutes and changed Don Peeples to *Don Peoples, 529 South Main Street*.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

Vice Chair Lalwani announced that she, along with Commissioner Giordano, attended the Silicon Valley Manufacturing Group housing meeting, at which affordable housing was discussed.

Chair Hay was pleased to announce that the City of Milpitas received a first place award from the American Planning Association, Northern Chapter, for best comprehensive plan for a small jurisdiction for the Milpitas Midtown Plan and Environmental Impact Report.

**VI.  
APPROVAL OF  
AGENDA**

Chair Hay called for approval of the agenda.

**Commissioner Nitafan** suggested that the Subcommittee members' names be added to the agenda in the future.

The Commission and staff agreed.

**Motion** to approve the agenda.

M/S: Sandhu/Lalwani

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 2, 3, 4, 5, 6 and 7.**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar. There were no changes made.

Chair Hay opened the public hearing on Consent Item Nos. 2, 3, 4, 5, 6 and 7.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 2, 3, 4, 5 and 6,  
and continue Item No. 7 to  
the May 28, 2003 Planning  
Commission Meeting**

**Motion** to close the public hearing on Consent Item Nos. 2, 3, 4, 5 and 6, and continue Item No. 7 to the May 28, 2003 Planning Commission meeting.

M/S: Nitaflan/Giordano

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 2, 3, 4, 5 and 6, and continue Item No. 7 to the May 28, 2003 Planning Commission meeting.

**\*2 USE PERMIT AMENDMENT P-UA2003-8:** Request to delete the drive-up teller/ATM service at Citibank, 5 N. Milpitas Blvd. (APN: 28-22-11). Applicant: CAS Architects. Project Planner: Annelise Judd, (408) 586-3273. (PJ#2326) *(Recommendation: Approval with conditions)*

**\*3 USE PERMIT NO. P-UP2003-16:** Request for approval to locate a 3,200 square foot religious facility in an existing building, zoned Heavy Industrial, located at 1757 Houret Court (APN: 86-41-009) and to provide nine (9) fewer parking spaces than is required by code as part of a parking reduction. Applicant: Calvary Chapel Milpitas. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ#2332) *(Recommendation: Approval with Conditions)*

**\*4 USE PERMIT AMENDMENT NO. P-UA2003-9:** Request to add live entertainment, including dancing and karaoke to an existing restaurant (Green Bamboo) at 420 South Main Street (APN: 086-40-001). Applicant: Michael Pham. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ#2328) *(Recommendation: Approval with Conditions)*

**\*5 MINOR TENTATIVE PARCEL MAP NO. P-MI2003-1:** Request to legalize a parcel at 600 Evans Road as a lot of record through the subdivision map process. (APN: 029-30-017). Applicant: Harry Babicka. Project Planner: Staci Pereira, (408) 586-3278. (PJ#2285) *(Recommendation: Approval with Conditions)*

**\*6 TIME EXTENSION (P-TE2003-2):** Request for a one time, 18-month time extension of a previously approved Site and Architecture Review and Use Permit for a religious facility at 91 Montague Expressway (APN: 086-34-012). Applicant: Mohammad Farooq Rydhan. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

**\*7 USE PERMIT NOS. P-UA2003-5 AND P-UA2003-10 AND "S" ZONE AMENDMENT NO. P-SA2003-12:** Request to amend previous use permits and site and architectural approvals for 9 telecommunication antennas housed in an additional building story for 12 antennas and associated equipment housed in a proposed 256 square foot clock tower, 62'-10" in height at 1000 Jacklin Road (APN: 28-05-015). Applicant: AT&T Wireless. Project Planner: Staci Pereira, (408) 586-3278. (PJ#2286) (*Recommendation: Continue to May 28, 2003*)

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

## **VIII. PUBLIC HEARING**

Chair Hay opened the public hearing on Agenda Item No. 1.

### **1. "S" ZONE APPROVAL NO. P-SZ2002-6, USE PERMIT NO. P-UP2002-35 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. P-EA2003-1:**

*(Applicant: Apton  
Properties, 230 North Main  
Street)*

James Lindsay, of the Planning Division, presented a request for a mixed use development consisting of 102 residential units and 6,000 square feet of retail that exceeds the height and setback regulations for the MXD-TOD district and includes vacation of a portion of Weller Lane, North Main Street and Railroad Court, and approval of the related Negative Declaration for the property located at 230 North Main Street, and recommended to adopt the Negative Declaration (P-EA2003-1), approve "S" Zone Approval (P-SZ2002-6) and Use Permit No. P-UP-2002-35, recommend to the City Council the partial vacations of Weller Lane, North Main Street and Railroad Court and the land swap acquisition of 4,660 square feet are not in conflict with the General Plan and recommend Council approval of the Density Bonus.

After Mr. Lindsay's PowerPoint presentation, **Commissioner Galang** asked if the Northern BART station will be near Apton Plaza and Mr. Lindsay replied that the BART station will be located near the Read Rite building and that it would benefit Apton Plaza.

Vice Chair Lalwani needed clarification of Council approval of the Density Bonus. Mr. Lindsay explained that according to the General Plan, 20 to 40 units are allowed per acre and the density bonus for affordable housing allows the increase to 46 units per acre.

Commissioner Nitafan asked if there are noise impacts related to the windows and doors. Mr. Lindsay stated that noise experts look at the materials before construction begins and check to ensure reduced noise levels.

Commissioner Nitafan needed clarification on special condition No. 28 which reads as follows:

*28) Prior to building permit issuance, the applicant shall submit to the Planning Division a revised acoustic study from a qualified acoustical consultant addressing the noise impacts of the Union Pacific Railroad on the project. All mitigation measures shall accomplish interior noise levels not exceeding 45 dB DNL and exterior noise levels at common outdoor recreation and private patio/balcony areas not exceeding 65 dB DNL.*

Mr. Lindsay responded that the railroad is approximately 90 to 100 feet from Apton Plaza thus the reason for condition.

Commissioner Nitafan stated that a vibration study should also be required because of the railroad. Mr. Lindsay replied that according to expert opinion, there is no degradation of the integrity to the buildings near the railroad.

**Commissioner Sandhu** asked if Weller Lane will close due to this new development and Mr. Lindsay said “No”.

**Commissioner Williams** recalled the construction of Parc Metro and asked if the same material will be utilized since noise was a debated issue with Parc Metro and Mr. Lindsay agreed.

Commissioner Giordano agreed that vibration is an issue and a study should be included in the condition.

Commissioner Galang asked how staff determines eligibility in reference to special condition No. 25 which reads the following:

*25) The applicant shall work with the Housing Division staff in establishing and determining the waiting list of eligible residents that are qualified for the project.*

Mr. Lindsay responded that a selection process is used to solicit Milpitas residents, and applicants are screened and put on a list.

Commissioner Galang asked if there is a lottery and Mr. Lindsay said he wasn’t sure, but that he would return, to the Commission with an answer at a later time.

Chair Hay commented that the density bonus allows for flexibility with design standards and asked if the City is participating financially. Mr. Lindsay stated that it is to be determined at a later time.

Chair Hay mentioned that the Negative Declaration does not address the issue of degradation of construction due to vibration and Mr. Lindsay commented that the ground vibration study is outside of CEQA and if it is a concern of the Commission, staff will complete the study.

Chair Hay invited the applicants to speak.

**Jim McClelland, with Maple Dell & McClelland Architects, LLP, 1646 North California Blvd., Suite 650, Walnut Creek, CA**, congratulated staff and the Commission for the Midtown Plan award, and noted that this is the third application submitted to staff. He also said that he hopes Apton Plaza can open soon so that the Midtown area will be revitalized.

**Badru Valani, owner, Apton Properties, LLC, 46509 Mission Blvd., Fremont, CA**, felt that the area is an eyesore and that Apton proposes to include luxury apartments, and 102 units, 6,000 square feet of retail shopping center, to be completed in April of 2004. It will be the first MXD use project, and is vital for Milpitas’ Midtown Area. Commissioner Williams asked Mr. Valani, “What is your vision of retail business to support our community?”

Mr. Valani replied that he would like to put in a nice deli, not a restaurant.

Chair Hay opened the public hearing on Agenda Item No. 1.

**Ed Connor, 1515 N. Milpitas Blvd., President of American Association of Retired People**, stated that everything on the north end of Milpitas is for retired people and that the Association would like to see a medical clinic put at the designated location. He is not in favor of the location due to this area being designated for seniors and felt that Weller Lane should be closed to allow senior housing.

**Don Peoples, owner, 529 S. Main Street, Acting President of the Milpitas Downtown Association**, stated that the mission of the economic vitality of downtown is important to raise the knowledge for residents. He supports the project.

**Mike Pham, owner of Green Bamboo Restaurant, and Design Committee Chairman of the Milpitas Downtown Association**, was impressed with the integration of small shops and mentioned that all members of their association voted unanimously in favor of the project.

Mr. Pham passed out a letter that stated support of the project.

Chair Hay congratulated the merchants.

#### **Close Public Hearing**

**Motion** to close the public hearing.

M/S: NitaFan/Galang

AYES: 7

NOES: 0

Mr. McClelland agreed with the staff report in regards to the future of the BART project, with minor exceptions, and wanted to work with staff to move forward with the project.

Chair Hay asked what type of food establishments would be available. Mr. Lindsay replied that there would be no fast food restaurants, but more coffee shop style delis due to the way solid waste is handled.

Based on question from Chair Hay regarding restaurants and use permits in Midtown, **Tambri Heyden, Planning Manager**, stated that in order to make the process for approval easier in Midtown, the Midtown regulations were written to not require a use permit in MXD for restaurants under certain circumstances but to require performance standards for such things as seating, waste, floor drains, recycling and odors instead.

In response to the applicant's disagreement with certain architectural recommendations in the staff conditions of approval, Ms. Heyden pointed out each recommendation of the elevations. Ms. Heyden showed the gaps in the window spacing on the west elevation and referenced special condition No. 8-C, 8-D and 8-F that read as follows:

8) *Prior to any permit issuance, the applicant shall revise the elevations in order to address the following concerns and suggestions to the approval of the Planning Commission Subcommittee:*

- c) West elevation: window spacing puts larger gaps between windows and places them closer to the vertical elements- solve by perhaps centering windows to equalize spacing; introduce canopies similar to the south elevation on some of the windows to add more depth to this elevation; provide a vertical recess for windows on front lobby tower similar to retail tower at corner of North Main and Weller; to make retail more inviting provide more glass area for all retail facades, including window areas on flush surfaces and door areas in projections – solve by perhaps removing stone veneer between doors and making all glass; address building projections at north end of west elevation by making them match the retail openings – solve by perhaps adding canopies, false windows, etc.*
- d) South Elevation: address retail area in similar fashion as recommended on west elevation; extend the stone veneer up wall at the base of the clock tower facing North Main and Weller similar to all other projecting features; add windows and similar elevation features to the western elevation of Unit A on 5th floor which will be visible from North Main due to the stepping down of the stories; increase roof height on portion of east elevation creates an unproportioned elevation, and further solve by perhaps reducing the eastern roof line to bring down the roof height to a similar scale and proportion with the roofline on the west elevation.*
- f) All elevations: increase the size of windows to make them more proportional to the building elements; to ensure high quality design, which is important to the visual appearance, provide details or typical catalogue examples of all canopies, decorative metal bracing, railings, windows, and doors proposed in order to see how these elements meet the building, their thickness, material, color, etc.; to improve proportions of accent features, raise the height of towers to be 10 feet measured from the highest point of tower to highest point of tallest roofline.*

Ms. Heyden explained that in addition to gaps in the window spacing, windows are partly obscured by the adjacent vertical elements.

Ms. Heyden referenced condition 8-D, and explained the reason for extending the stone veneer facing North Weller and Main since it is a prominent view and is seen as an access point for the Senior Center.

Ms. Heyden also explained condition 8-F (size of the windows), and suggested they be increased since the windows are small, and there are issues with light getting into the units. Also, in 8-F is the issue of the height tower being raised to 10 feet, because 7 feet makes the towers look shorter and wider and 10 feet would make the towers look taller and more prominent.

Ms. Heyden also referenced Condition No. 10-B, which reads the following:

*10) Prior to building permit issuance, the applicant shall submit a revised streetscape plan to the approval of the Planning Commission Subcommittee with the following revisions:*

*b) Continue the paving treatment proposed on portions of North Main Street and Weller Lane to the entire building frontages on North Main Street, Railroad Court and Weller Lane.*

Ms. Heyden explained that staff is suggesting to extend the paving treatment along the entire stretch of Main Street, which currently starts on Weller along the retail frontages, and extends North on Main Street. Staff has concerns about the retail frontage not extending along the entire Main Street frontage. Staff recommends that a treatment be added to make the building indentations look as if they are retail spaces. Ms. Heyden suggested revising condition No. 10-B to read the following:

*10) Prior to building permit issuance, the applicant shall submit a revised streetscape plan to the approval of the Planning Commission Subcommittee with the following revisions:*

*b) Continue the paving treatment proposed on portions of North Main Street and Weller Lane to the entire building frontages on North Main Street, Railroad Court and Weller Lane, if it is consistent with the City's conceptual construction plans of Main Street.*

Commissioner Williams referenced condition No. 8-D, the stone façade on the corner, and asked how this will relate to tenant signage above each retail space. Ms. Heyden noted that the sign program has not been put together as of yet, but staff is looking for consistency among each tenant space and that the veneer should not interfere.

Commissioner Williams also referenced 10-B, the sidewalk, and asked what type of material will be used. Ms. Heyden responded that the design detail hasn't been submitted yet, but concrete will be used with a slightly decorative pattern. Commissioner Williams agreed with staff to continue the paving treatment, since it will be a different material besides the standard City concrete.

Mr. McClelland discussed condition No. 8-C, window spacing, and pointed out the windows on the west elevation. He stated that because the building is curved the elevation depict a portion of the windows as not being centered. Regarding the gaps in spacing, Mr. McClelland stated he could add more windows.

Mr. McClelland also discussed Condition No. 8-D, extending the stone veneer, and said that from his experience, different retail tenants are easily identifiable by their frontage to help customers identify them and that is why they didn't add the veneer at the corner.

Mr. McClelland also discussed Condition No. 8-F, size of the windows, and said they have deliberately sized the windows due to building code requirements, seismic and fire escape requirements. Regarding 8-F, tower height, he stated they are willing to revisit the size of the tower heights.

Mr. McClelland referenced condition 10-B, tenant identification and said the purpose was to limit the enhanced paving to the retail areas.



Commissioner Williams referenced condition No. 10-B and asked whether the area staff is requested be changed is going to be standard city sidewalk material. Mr. McClelland responded, "Yes".

Commissioner Nitafan mentioned his concern with the security and fire safety of people inside the complex as he could only see one exit.

Mr. McClelland noted on the illustration of the site plan, that there are several exits to the building consistent with Building and Fire Codes.

Commissioner Nitafan requested to add a condition to identify the exits. No other comments from Commissioners were made about this issue.

Commissioner Giordano brought up the vibration study and asked if it would be feasible to go back through history for such projects as K & B at California Landing, to review the history issues and problems relative to those specific projects and have a vibration study done.

Mr. Lindsay stated that it would not be difficult.

Chair Hay asked staff to agendaize this at a future meeting since the applicant agreed to do it and requested a condition to be added. Further discussion ensued that later altered the outcome of this request.

Mr. Lindsay clarified that the recommendations from the study be incorporated in the project, such as historical aspects and suggested to allow staff to research the history of any vibration studies, and come back and report to the Commission. He reassured the Commission that this project is built on top of a podium and the structure is strong.

Commissioner Giordano asked about the validity of vibration studies.

Mr. Lindsay replied that the condition could be revised to complete a vibration report for this project and have it reviewed in conjunction with or after the research project, so that the Planning Commission has the knowledge base from the history prior to reviewing the vibration study.

**Kit Faubion, City Attorney**, stated that one idea might be to require that the study include noise and vibration, and the study include a historical survey of what the after-effects could have been. Staff could inform the Commission and the public about the decision. Ms. Faubion suggested Condition No. 28 be revised to read the following:

28) *Prior to the building permit issuance, the applicant shall submit an acoustic and vibration study from a qualified acoustical consultant addressing the impacts from the Union Pacific Railroad on the project to the approval of the Planning Commission. The vibration study shall include a historic survey of vibration studies done for residential projects built adjacent to the railroad within Milpitas. This survey shall include a review of City records for complaints from residents in these projects and whether the causes for these complaints were adequately addressed in the respective vibration study. The conclusions drawn from this historical review shall be incorporated into the recommendations for the Apton Plaza project. All recommended noise mitigation measure shall accomplish interior noise levels of not more than 45 dB DNL and exterior noise levels at common outdoor recreation and private patio/balcony areas not more than 65 db DNL.*

Upon request of the Chair, Ms. Heyden read staff's suggested revisions to the design conditions (in addition is the one noted for 10-B on Page 7 of these minutes) as follows:

8) *Prior to any permit issuance, the applicant shall revise the elevations in order to address the following concerns and suggestions to the approval of the Planning Commission Subcommittee:*

c) *West elevation: solve window spacing near towers to add further articulation; introduce canopies similar to the south elevation on some of the windows to add more depth to this elevation; provide a vertical recess for windows on front lobby tower similar to retail tower at corner of North Main and Weller; to make retail more inviting provide more glass area for all retail facades, including window areas on flush surfaces and door areas in projections – solve by perhaps removing stone veneer between doors and making all glass; address building projections at north end of west elevation by making them match the retail openings – solve by perhaps adding canopies, false windows, etc.*

**Motion** to approve "S" Zone Approval (P-SZ2002-6) and Use Permit No. P-UP-2002-35 subject to Council's approval of the Density Bonus, and recommend to the City Council to adopt the Negative Declaration (P-EA2003-1), and recommend that the partial vacations of Weller Lane, North Main Street and Railroad Court and the land swap acquisition of 4,660 square feet are not in conflict with the General Plan and recommend Council approval of the Density Bonus, with revisions to condition Nos. 17, 18, 21, 24 and 50 as per staff's handout passed out at the beginning of the meeting, and revised conditions 10-B, 28, and 8-C as noted in these minutes.

M/S: Lalwani / Galang

AYES: 7

NOES: 0

Ms. Faubion asked to be excused at 9:00 P.M. and Chair Hay agreed.

## **IX. NEW BUSINESS**

Chair Hay opened Agenda Item No. 8 under New Business.

### **2. NEW C.3 URBAN RUNOFF REQUIREMENTS PRESENTATION**

**Darryl Wong, Utility Engineer**, presented an overview of the new C.3 urban runoff requirements, and introduced **Dan Cloak, Consultant**, with Dan Cloak and Associates, who presented the new draft C.3 guidebook and explained changes to storm water control plan submittals. Mr. Cloak mentioned that the trigger date for the new C.3 urban runoff requirements has been changed to October 15, 2003.

Chair Hay asked when the final guidebook will come back for adoption and Mr. Wong replied that he would bring it back before October 15<sup>th</sup>.

Chair Hay asked if there will be any major changes, and Mr. Wong replied that staff has just refinements to make.

Commissioner Nitafan stated that he is looking forward to the impervious surface requirement in housing complexes and felt there is a need to make the guidelines requirements.

Ms. Heyden summarized that the implementation date is October 15, 2003, and that this will be handled similarly to the Midtown Plan in that after it is adopted, the deemed complete date for submittal is very important for applicants. She stated that we have notified them through mailers and will be conducting a community workshop to go through with them the guidebook and development process changes. She referenced a new menu of C.3 related special conditions and indicated that the guidebook will have to be amended periodically.

## **X. ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:30 p.m. to the next regular meeting of May 28, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

Veronica Rodriguez  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**April 23, 2003**

- I.** **PLEDGE OF ALLEGIANCE** **Chair Hay** called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- II.** **ROLL CALL** Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams  
Absent: None  
Staff: Faubion, Heyden, McNeely, Pereira, and Lindeman
- III.** **PUBLIC FORUM** Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.  
  
There were no speakers.
- IV.** **APPROVAL OF MINUTES** Chair Hay called for approval of the minutes of the Planning Commission meeting of April 9, 2003.  
April 9, 2003  
  
**Motion** to approve the minutes of April 9, 2003 as written.  
  
M/S: Sandhu/Lalwani  
  
AYES: 7  
  
NOES: 0
- V.** **ANNOUNCEMENTS** **Commissioner Lalwani** thanked citizens for attending Congressman Mike Honda's legislative update last Monday, the combined effort by the Milpitas Chamber of Commerce and Milpitas Rotary. Next Tuesday, April 29, there will be a small group tour for Milpitas citizens interested in visiting the India Community Center at 555 Los Coches Avenue. If anyone is interested they can notify Commissioner Lalwani.  
  
**Tambri Heyden, Planning Manager**, reminded Commissioners that the current Subcommittee rotation effective April 1<sup>st</sup> includes Commissioners Galang and Lalwani as members and Commissioner Nitafan the alternate.
- VI.** **APPROVAL OF AGENDA** Chair Hay called for approval of the agenda.  
  
**Motion** to approve the agenda as written.  
  
M/S: Lalwani/Sandhu  
  
AYES: 7  
  
NOES: 0
- VII.** **CONSENT CALENDAR** Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar. There were no changes made.  
**Item Nos. 1, and 2 and 4 and 5**

**Commissioner Giordano** advised that she will abstain from Consent Item No. 5 due to the close proximity of her property in relation to that of the applicant. **City Attorney, Kit Faubion**, advised it is not necessary for Commissioner Giordano to leave the dais when the item is discussed.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2, and 4.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 1, 2, and continue  
Item No. 4 to the May 14,  
2003 Planning Commission  
Meeting**

**Motion** to close the public hearing on Consent Item Nos. 1 and 2 and continue Item No. 4 to the May 14, 2003 Planning Commission meeting.

M/S: Lalwani/Galang

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1, 2, and 5 and continue Item No. 4 to the May 14, 2003 Planning Commission meeting.

- \*1 HILLSIDE SITE & ARCHITECTURAL REVIEW (P-SA2003-3):** Request to revise previously approved plans for a not-yet-constructed hillside residence, deleting the previously approved basement with skylights, and adding a patio cover. (APN: 42-30-009). Applicant: Kevin Chiang. Project Planner: Annelise Judd, 586-3273 (Recommendation: Recommend approval with conditions to the City Council)
- \*2 SITE AND ARCHITECTURE APPROVAL (P-SZ2003-3):** Request to construct a 4,000 square foot commercial building, with associated parking and landscape modifications at 100 North Milpitas Boulevard. (APN: 028-12-021). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Approval with Conditions)
- \*4 "S" ZONE APPROVAL NO. P-SZ2002-6, USE PERMIT P-UP2002-35 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. P-EA2003-1:** Request for a mixed-use development consisting of 101 residential units and 6,000 SF of retail that exceeds the height and setback regulations for the MXD-TOD district and includes vacation of a portion of Weller Land and approval of the related Negative Declaration for the property located at 230 North Main Street (APN 028-24-017 and -018). Applicant: Apton Properties, LLC, Project Planner: Staci Pereira, 586-3278. (Recommendation: Continue to May 14, 2003)
- \*5 SITE AND ARCHITECTURE AMENDMENT (P-SA2003-45):** request to install a 6-foot high property fence along the rear and sides of the property in the hillside area at 638 Quince Lane (APN 029-59-009). Project Planner: Troy Fujimoto, 586-3287. (Recommendation: Approval with Conditions)

M/S: Williams/Galang

AYES: 6

NOES: 0

ABSTAIN: Commissioner Giordano abstained from voting on Item No. 5

## VIII. PUBLIC HEARING

### 3. VARIANCE (P-V2003-1): *Applicant: Chad and Jessica Leffler*

Chair Hay opened the public hearing on Agenda Item No. 3.

Ms. Heyden presented the request for a variance to allow a 2-foot encroachment of a residential addition into the required side yard of an existing, legal non-conforming residence located at 123 North Gadsden Drive (APN: 029-18-009). This site currently contains a 1,306 sq. ft. single-story residence with conforming rear and front set backs. The side yard set back adjacent to the garage is 5 feet and current code requires 6 feet. The side yard setback on the alternate side is 6 feet. The total is only 11 feet. and both side yard setbacks must equal no less than 13 feet. This is a non-conforming structure situation of 2 feet.

Ms. Heyden reported the applicant wishes to construct a 496 square foot addition in front of the home to encroach 2 feet. within the required side yard of the subject site to align it with the existing nonconforming structure. Commissioners' meeting packets contain a site plan. Dotted in red is the 8 foot setback that is required for this addition in order for it to comply with the current requirements. The five required findings for variance approval of City code mirrors State law. They are: 1) alleviate a hardship, due to irregularity of lot, the topography or surrounding circumstance; 2) variances should not be granted except in the case of hardship, 3) if variance is denied, conditions or circumstances present shall not deprive benefits to property owner, 4) variance should not be used to correct a circumstance generally applicable to entire district and 5) variance must not injure other parcels in the district or be detrimental to the public welfare. Ms. Heyden reviewed the findings as written in the staff report.

Staff's recommendation is to deny this variance for the findings stated.

Discussion ensued wherein **Commissioner Nitafan** offered an alternate way the applicant could change the plans. Ms. Heyden confirmed that the total setback of both sides of the home must be 13 ft. The setback on the garage side should not be less than 6 feet. Ms. Heyden concluded that Commissioner Nitafan's suggestion would meet the code.

In response to **Commissioner Williams**, Ms. Heyden confirmed the chimney is excluded from the overall analysis.

In response to **Commissioner Lalwani**, Ms. Heyden stated that she could not verify if the photographs provided by the applicant, that are referred to as the neighbor's house with the same addition, are the same as what the applicant is requesting. The information would have to be field verified.

In response to Chair Hay, Ms. Heyden reported that State law governs variances; language in State law is general, and the City code sets forth these 5 specific findings, which go above and beyond State law as cities are allowed to do. All factors do not have to be present in order to grant the variance. City Attorney Faubion, after reviewing the Zoning Ordinance, confirmed that the 5 standards guide the Planning Commission in the granting of the variance. The variance must be applicable to a hardship with the lot not the circumstances of the family.

Chair Hay invited the applicant to address the Planning Commission.

**Chad Leffler, the applicant**, stated that his family is increasing and he is trying to expand his 3-bedroom residence. He wants to keep a uniform look with the other houses in the neighborhood. He believes that coming in 2 feet makes the residence look too busy and that the resale value would probably not be as much as the residence next door. He stated his blueprints were drawn up before October 2002 when the code changed and he was waiting for refinance funds, then, he ran into the variance problems. His personal preference is that the residence would look better if it had straight lines. If this cannot be done, then he will have to scrap the project. He expressed thanks for the Commission's consideration of his project.

There were no other speakers from the audience.

#### **Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 3.

M/S: Williams/Giordano

AYES: 7

NOES: 0

**Motion** to deny variance request P-SA2003-19 based on variance requirements and in accordance with staff's findings and recommendation to deny the variance.

M/S: Nitafan/Giordano

AYES: 7

NOES: 0

#### **IX. NEW BUSINESS**

Chair Hay opened Agenda Item No. 6.

##### **6. "S" ZONE AMENDMENT NO. P- SA2003-3: Staff Contact: Staci Pereira, 586-3278.**

**Commissioner Nitafan** abstained from discussion and voting on this item due to a conflict of interest. His business is 300 feet from this property. Chair Hay excused Commissioner Nitafan for the remainder of the evening. Commissioner Nitafan left the meeting at 7:36 p.m.

**Staci Pereira, Jr. Planner**, presented a request for building and site improvements associated with converting a residence to a commercial building for medical office use at 429 South Main Street (APN 086-10-022).

Ms Pereira stated that the project as proposed does not meet the following standards for the mixed-use district: 1) setbacks, 2) parking, and 3) site access, vehicular access and pedestrian access. She referred to the staff report.

The project as proposed does not meet the following standards for the mixed-use district:

1) Setback requirement: The existing front setback is 29 feet., the required Midtown minimum is 8 feet and maximum of 15 feet. The existing south side setback is a zero lot line; the north side is 18 feet. The required Midtown side yard setback is 10 feet.

2) Parking: There are 6 parking spaces proposed, 5 on site and one on the street in front of the building. Based on one space per 225 gross square feet of floor area, the parking requirement is 8 spaces, which staff believes the site can accommodate.

3) Site access/utilities: There are utilities on site above ground; Midtown requires underground utilities. The applicant has stated that no means exist to gain access on an adjacent property to share an ingress or egress on site. There must be vehicular and pedestrian access to the site. Converting from residential use to commercial use requires a commercial solid waste account, service and commercial bins. As proposed, there is concern BFI and delivery trucks cannot turn around safely on site and must back into Main Street. Staff also has safety concerns with bicyclists and pedestrians using the sidewalk on Main Street.

Ms. Pereira stated she has discussed several potential solutions with the applicant regarding the driveway width and access. One solution staff suggested may be to redesign the rear of the site to allow a turnaround so that BFI and delivery trucks would not have to reverse out of the site. This would require removing the rear accessory building, shifting parking east, paving the rear of the site and constructing a trash enclosure at the northwest corner of property.

Of the 8 Midtown Design Guidelines, which the project does not meet, two of them can be met with the redesign of the project.

The project as proposed conflicts with the General Plan, which requires new projects to be bicycle and pedestrian friendly. The project does not meet the intent of the "S" Combining District. The project does not meet the intent of the Midtown Plan because it is in conflict with Community Goal 2 and Policy 5.1, which establish a pedestrian-oriented mixed-use district that is centered on Main Street, consistent with the Design Standards and Guidelines. The project does not comply with the applicable Design Standards and Guidelines, unless the site is redesigned.

Based on these findings, staff recommends denial of the project as proposed.



In response to Commissioner Giordano's question how setbacks required in the Midtown Plan specifically address existing areas that have non-conforming setbacks, Ms. Pereira stated that an applicant can deviate from the Development Standards with a Use Permit, however the applicant is not proposing to add onto the existing building. Therefore, it doesn't have to meet the Development Standards. Commissioner Giordano asked what was the philosophy, when the Midtown Plan was being developed, to enable buildings of this nature to be converted and fold into the Midtown Plan. Ms. Heyden reported that as with any parcel in the City, if you have a nonconforming structure, that doesn't meet the setback requirements, it doesn't matter if you change the use of the building; you are allowed to continue to use that structure. Unless there is an addition to the structure, the issue of it being nonconforming doesn't really come into play because only the addition would need to meet the current setback requirements.

**Commissioner Giordano** posed the question, "If Milpitas did not have the Midtown Specific Plan, and this project came forward, would it meet or would it not meet the setback requirements?" Ms. Pereira said she was not aware of the setbacks for the C-2 district, the previous zoning for the property.

Commissioner Giordano asked if the parking requirement could be modified if this is going to be more of a medical clinic use. She suggested that maybe long-term parking would not be necessary because this type of business would be more of an "in-out" clientel. Ms. Pereira stated that the applicant could request a parking reduction, which would require a trip generation study that would be included with the project application. She stated parking was not an issue with the applicant.

In response to several questions from Commissioners, Ms. Pereira indicated that typically, the pick up for solid waste is once a week, but it depends on the use. This structure has always had a residential account so BFI does not access the property.

**Commissioner Galang** asked how often would they have pick up. Ms. Pereira indicated that typically the pick up is once a week, but it depends on the use. This structure has always had a residential account so BFI does not access the property.

In response to Commissioner Giordano, Ms. Pereira stated that 500 – 600 square feet. of the residence was converted into a salon and has remained. This project request is to expand the commercial use throughout the entire structure and discontinue the residential use. Staff spoke with the applicant, in March, to discuss compliance with the design guidelines. Of the 8, they do not comply with 2 guidelines, but are willing to make the changes.

Regarding the issue of the width of the driveway, Ms. Pereira confirmed that although it should be 36 feet for a commercial standard driveway, staff is agreeing that 24 feet. would be sufficient. The project does not propose to widen the driveway to 24 feet. To widen the driveway would require removing a utility pole and undergrounding. Ms. Pereira referred to Exhibit S. in the Commissioners' packets. Commissioner Lalwani asked what has the applicant said about moving the utility pole; is it okay with the utility company to move it? Ms. Pereira indicated that staff has not gotten into discussions about that with the applicant.

In response to Commissioner Lalwani regarding the solid waste issues, Ms. Pereira indicated that in order to accommodate BFI trucks to turn around on site and not have to back up into the street would require the applicant to remove the rear building and shift the parking east in order to allow a larger area for a 3 or 5 point turn. Commissioner Lalwani asked if the applicant is not agreeing to this, to which Ms. Pereira replied staff has not gotten into discussions with the applicant.

Ms. Pereira confirmed to **Commissioner Galang** that according to the City's Building Code requirements, it is mandatory to provide a handicap space and reported the Midtown requirements. This property does not have the space to provide the parking on the street in front of the building. In answer to another question, Ms. Pereira stated that staff supports the front entrance of the building being used as an emergency entrance and that wouldn't be a problem if the frontage were in compliance with the Midtown Plan. Ms. Pereira stated that the Midtown Plan allows for freestanding signs, only at major site entries, which this project complies with. Staff has suggested minor upgrades for the sign to compliment the exterior of the building.

Chair Hay invited the applicant to address the Planning Commission.

The applicant, Nichole Thanh-Cam Vecchi thanked the Commission for reviewing the project and hoped tonight's meeting could resolve the outstanding issues. She introduced her husband, Hein N. Nguyen and their attorney, Kirsten Power, who specializes in land use and redevelopment law. She said this project has a lot to offer to the City because with the closing of the San Jose Medical Group, Milpitas lost over 20 physicians, of which at least 7 of those primary care providers are women.

The applicant addressed two of the concerns Planning raised; and solid waste and site access. She stated that by OSHA law they have account with BFI for medical waste to be picked up. She said in a letter dated in July, Planning indicated they wanted curbside pickup but after meeting in February with the City's Solid Waste management and Planning staff, she agreed to City staff's request to have solid waste pickup remain curbside. Then later in March, staff was requiring onsite pick up. Then after April 15 letter, she received a call which said that in order to do onsite pickup, the applicant would need to knock out the existing, legal, non-conforming back building in order to make space for the trucks to turn around. Ms. Vecchi referred to her Exhibit C regarding a proposed hammer turnaround. She stated that the hammer turnaround is more than adequate for the trucks to turn around.

Chairperson Hay expressed concern with the items the applicant was presenting and asked if staff had an opportunity to review what had been given to the Planning Commission and asked if it was new information. Staff responded that they had not.

The applicant stated she called staff about these items and she reiterated to the Planning Commission some of the communications she had with Planning staff regarding the issues. The applicant stated she mentioned to staff on Monday, that there is plenty of land on the property for BFI trucks to turn around and her architect called Ms. Pereira to talk about the hammer turnaround. The applicant said it is her opinion that the hammer turnaround is a more practical way of solving this issue so that they do not have to knock out the existing, legal, nonconforming back building. She explained the hammer turnaround and said she was told that it is not adequate. Therefore, that is why she is presenting this solution to the Commission to see if it is adequate.

In response to Chair Hay, the applicant stated that her architect came up with the drawing this morning. Chair Hay indicated that staff has not had an opportunity to review it.

Ms. Vecchi referred to the 2<sup>nd</sup> issue, which she stated was thoroughly discussed on March 28 with Engineering and Ms. Pereira. She referred to Engineering's drawing that Ms. Pereira showed earlier; this was Engineering's proposal to solve the problem of safely approaching the driveway. She further stated that she would comply with the suggestions of Engineering, however, she and her husband feel that removing or relocating the existing utility pole wouldn't enhance the safety issue. She stated that Engineering's suggestion back on March 18 left the utility pole in place and they did not say it was a safety issue then. She said she did not learn about the request to remove the pole until April 15. She stated she spoke with all their consultants including civil engineering. The architect, a local paving company and PG&E, all of whom felt that with a slight shift of the flare southward, that they wouldn't have to remove the utility pole to enhance safe access to the driveway. What Engineering suggested back on March 18 would adequately meet that safety issue.

Ms. Heyden reported that the exhibit, to which the applicant is referring, was provided as only a courtesy to the applicant; it was not distributed to the Planning Commission because staff is recommending denial. The document was provided as an indication to the applicant of what kinds of requirements would need to be done if this property were converted for commercial purposes. It is not a completed product and is not considered to be a public final product at this time.

Ms. Vecchi referred to the last document *Special Conditions from Planning Staff* and stated they would comply with all of it except the removal of the back building, and removal of the utility pole. She read Condition Nos. 8 and 11 on pages 2 and 3 of the document. She said that these two items are asking them to give their neighbor and City Government carte blanche to their property, which is a constitutional issue.

The applicant's attorney, Kirsten Powell, 255 W. Julian Street, San Jose spoke on the two issues, Conditions Nos. 8 and 11. She said she understands Ms. Heyden's comments but in the event that the Planning Commission is comfortable with the changes her client is proposing, the (outstanding) concerns are Nos. 8 and 11.

Ms. Powell stated that Condition No. 8 requires her clients to agree to consent to any future assessment district that may be imposed. Pursuant to the Streets and Highways Code and Proposition 218 of the State Constitution, all property owners are allowed to vote to approve or deny an assessment district and that by requiring this of them at this point, without informing them what those assessment districts may or may not be, is an infringement on their rights and should not be included in the conditions.

Condition No. 11 is a requirement to grant their neighbors cross access easements. Given the proposal that you have in front of you, for the use that is intended, the requirement of an easement dedication seems to be excessive and there is no nexus for that. The applicants are more than willing to work with their neighbors in the event that cross access issues are necessary. But given the site and surrounding sites, it seems very unlikely that would happen. She stated she and her clients would oppose that as an excessive requirement and asked that those 2, (Nos. 8 and 11) be eliminated from the conditions for approval.

During discussion and in answer to Commissioner Lawlani, Ms. Vecchi stated the neighbor to the south is a resident/owner Joann Souza and her mother. She said they approached them about future access easement. Should they also wish to have commercial access it would be beneficial to both parties to cooperate now so they could also have access when they need it. However, they flat out denied any cooperation for an easement. Ms. Vecchi said she asked the owner to the south if she was considering converting her property to commercial use and that owner said she was not thinking about that and was not interested in mutual access.

In response to Commissioner Lalwani regarding if staff thought the southern property would be developed later, Ms. Pereira stated that given the age of the property, staff would assume so, but there are no proposals nor interest expressed from that property owner at this time.

Ms. Powell stated that the buildings on her client's property are also built either on or next to the property line so a shared access really wouldn't work, given the configuration of the buildings on both properties.

Chair Hay stated that there is no recommendation for approval with conditions. These conditions were not given to the Planning Commission before tonight, except for what the applicant has just provided for the purposes of approval; there has not been an opportunity for review. Chair Hay asked Ms. Faubion to address and advise on the two issues brought up by the applicant's attorney.

Ms. Faubion stated that she also has not had an opportunity to review the conditions, and perhaps Ms. Heyden can clarify that these conditions are not being offered to the Commission as conditions of approval or potential approval, they are sort of a document in progress. (Earlier in the meeting, Ms. Heyden had already clarified this.) Ms. Faubion stated it is her belief that both of these conditions derive from policies in the Midtown Plan. Condition No. 11 recognizes there is a great deal of parceling that can inhibit redevelopment of some of the sites and she believes there is a policy for combining driveways, sharing access and trying to minimize the number of driveways. Policy No. 11 also seems to be derived from the General Plan policies.

In response to Chair Hay, Ms. Faubion clarified that an assessment district does have its own set of rules and yes; it would require a vote of the property owners to assess themselves.

Ms. Vecchi summarized the key things she is asking the Planning Commission for help today: 1) consider the proposal for the hammer turnaround to a more practical solution for the BFI trucks to exit safely. 2) Consider letting her adopt what Engineering had suggested on the 18<sup>th</sup> of March, which was a 24-foot, new driveway, with a 4 foot. flare with a slight shift over so they don't have to remove and underground the utility pole. Ms. Vecchi contacted PG&E to get an idea of the costs for that. PG&E informed her it is a very involved process of maybe 6 months to 1 year. Although they could not quote a cost, they indicated it would be a minimum of \$10,000. Also, PG&E indicated the City must first approach PG&E; the applicant cannot approach PG&E. Ms. Vecchi stated that her architects, civil engineer and paving companies are of the opinion that with a slight shift, the applicant may not have to remove the utility pole. Ms. Vecchi stated she is not contesting the issues raised by the Planning Division and is not trying to get around the safety issue but she said she is proposing a more practical solution to the issue.

Regarding Condition Nos. 8 and 11, Ms. Vecchi stated those would have to be worked out between the two attorneys. She said she believes there should be some limitations as to what is being asked of her.

Mike McNeely, City Engineer, asked if he could clarify the driveway item. He explained that the applicant is advocating an offset driveway. He referred to the plan showing the driver coming southbound from left to right. If the driveway is moved south, as shown in red on the plan, then the driver trying to make the right turn would need to make more than a 90 degree turn. The driver would have to snake around the pole and that is the potentially dangerous situation that staff would like to avoid. That is why staff is recommending that the pole be moved northerly or placed underground. Mr. McNeely confirmed that the drawing provided earlier to the applicant, and to which the applicant alluded to, was not a final product; it was a work in progress that depicts the way the driveway would be located.

In response to Commissioner Lalwani's question, Mr. McNeely stated that he would have to talk with staff about the 4 foot. flare, but the flare is a standard flare as shown on the plan. The 4 foot. flare would help to increase the width of the driveway but there would still be a potential for danger; there would be cars coming southbound and having to double back with opposing vehicles coming out of the driveway. He added that staff has not seen nor reviewed the drawing regarding the applicant's plan for the hammer turnaround.

Ms. Vecchi said that, in terms of a safe approach of the driveway, if you look at the suggestions on the special conditions from Planning, it said it would help address that issue, but it is also based upon an increase of volume projected in 10-20 years. With the economic downturn, she said she doesn't see in the foreseeable future that a rise in the traffic volume is an issue.

Chair Hay invited anyone in the audience to address the Planning Commission.

Don Peoples, 529 South Main Street, stated that he was representing himself in addressing the Planning Commission and he does not have any professional relationship to the project. He expressed his opinion that the Midtown Plan is very much for new development but it also has gray areas. He believes this type of business is what the people want on Main Street and which is certainly an improvement over the former use and is a positive influence on Main Street. He believes that to solve this requires creative thinking for everyone so that something positive is quickly done there and public safety is accommodated.

Ms. Heyden stated that this is the first site in Midtown that the Planning Commission has seen that is a redevelopment site. The redevelopment of this site is more challenging and more difficult than if you were to demolish the buildings and reconstruct buildings in the proper location, proper setbacks, and proper size. In this case staff has to work around some situations. Additionally, review for staff is tougher.

Ms. Heyden stated that the March 18 comments were shared with the applicant during the process. There is an evolution with project review; once comments are received back from the departments. Information sharing occurs internally to discuss conflict. The review by Planning staff is never complete until the day the (Commission) packet is released. Ms. Heyden stated that the hammer turnaround mentioned by the applicant has not been reviewed; it was mentioned to staff verbally. Until staff can see it on paper, because the site is so tight, it would need review by staff as a group to allow staff to generate the proper special conditions. She said that staff's intention regarding the conditions the applicant presented this evening, was to provide something for the applicant so they could begin to get some idea of the costs associated with redeveloping this site to meet the zoning code regulations, safety considerations and meet the intent of the Midtown Design Guidelines.

Regarding traffic volume, Ms. Heyden stated that when a site is approved and constructed, it is there for a long time. Therefore, current traffic volumes as well as projected future volumes 15-20 years from now must be considered. Staff's job is to advise and look at the future to ensure that this site has the proper conditions and will be safe and well-designed.

Chair Hay stated that this application is premature. It appears there is agreement on some areas where it didn't first appear there was agreement. Also, it appears there needs to be some additional discussion on some areas. Chair Hay said he is uncomfortable with denying or approving a project when it is as incomplete as this one is. The City Attorney has not had an opportunity to review the design that was brought forth this evening by the applicant. As part of that, the Planning Commission would expect complete staff review and review by the City Attorney to evaluate the conditions.

Chair Hay requested a response from BFI regarding the pertinent issues; a proposal has made which he believes is worthy of evaluation by BFI, as an alternative to what staff has been proposing.

Commissioner Williams expressed concern regarding growth of future traffic in the area. Because Milpitas is a pass through City for traffic through the area at all hours of the day, there is a real need to understand the traffic patterns on Main Street.

Commissioners agreed this application is premature and agreed they are not ready to vote for denial or approval at this time. There was consensus the best approach is to have staff and the applicant revisit the outstanding issues once again. Commissioner Giordano stated she believes all Commissioners agree this project is a welcomed use to the community and agree they want to revitalize the Midtown area.

**Motion** to continue this item to the next Commission meeting or whenever appropriate when staff and applicant have reached agreement. The key areas to be revisited are: 1) the main item -- that we maintain the architectural design that the Midtown Plan was specifically designed to do. 2) The easement issue as brought forth by the (applicant's) Attorney, that there is or is not a legal problem. -- that needs to be taken to staff and the applicant's attorney. 3) The hammerhead turnaround; both BFI and City staff need to agree that it would work. 4) Parking: can the parking be satisfied and agreed upon. 5) The PG&E utility pole issue needs to be resolved. 6) Traffic: It is necessary to make sure that there is no concern regarding that issue.

M/S: Giordano/Lalwani

Commissioner Giordano stated she would like to see these issues brought back and would hope this project would go forward.

Chair Hay stated that because the Midtown area is a main priority, this item should be advertised, whether it comes back as a public hearing or not.

AYES: 7

NOES: 0

**X.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:42 p.m. to the next regular meeting of May 14, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

VICTORIA LINDEMAN  
Recording Secretary Pro Tem

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**April 9, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams  
Absent: None  
Staff: DeVries, Faubion, Heyden, King, Lindsay, McNeely, Medina, and Rodriguez

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers.

**IV.  
APPROVAL OF MINUTES  
March 26, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of March 26, 2003.

**Commissioner Giordano** referenced page 2 of the minutes and changed the following sentence to read "Commissioner Giordano wanted to thank Mayor Esteves, Vice Mayor Dixon, City Council, MUSD President, Vice President and Board, City Manager and Fire Chief for their support at the March 15, 2003 Bobby Sox opening ceremony held at the Roger Yee Fields."

Commissioner Giordano also referenced page 3 of the minutes and changed the following sentence to read "Commissioners with a conflict of interest on any action can *excuse* themselves from voting on the appropriate action."

**Motion** to approve the minutes of March 26, 2003 with the changes indicated.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

**Tambri Heyden, Planning Manager**, noted that a copy of the Home Depot six-month appeal staff report was distributed along with plans showing the perimeter and landscape screening alternative to a masonry wall approved by the Home Depot task force and City Council. She also noted that the reported sign violation of a banner at Caesar's Pizza was corrected in one day. In response to Commissioner Giordano's inquiry regarding speeding on Heath Street and the possibility of installing traffic calming, Ms. Heyden noted that the request has been forwarded to the appropriate staff person and she will report back at the next meeting.

**Commissioner Williams** thanked Commissioner Sandhu and the Sikh Foundation for the community breakfast event at Sunnyhills Church.

**Commissioner Sandhu** thanked the Sunnyvale neighborhood organization and all those who attended the breakfast.



**Vice Chair Lalwani** announced that the Rotary Club and Chamber of Commerce have invited Congressman Mike Honda to speak about the legislative update on April 21, 2003. For more information, those interested can call 262-2613.

Commissioner Giordano also thanked Commissioner Sandhu for the community breakfast noting that "It was very informative and the food was delicious". Commissioner Giordano asked staff if any action is required of the Commission regarding the Home Depot report and Ms. Heyden said "No". Commissioner Giordano also asked staff if the two telecommunication issues that are consent items could be referred for Subcommittee approval and Ms. Heyden replied that they require Planning Commission approval based on the way the ordinance is currently written.

**VI.  
APPROVAL OF  
AGENDA**

Chair Hay called for approval of the agenda.

Ms. Heyden noted a correction to Agenda Item No. 6 (AMENDMENT TO THE ZONING ORDINANCE TEXT P-ZT2003-1) and indicated that the continuation date should be noted as to March 26, 2003.

**Motion** to approve the agenda with the change indicated.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 1, 3, 4, 5 and 8**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

**Commissioner Williams** requested that Item No. 2 (USE PERMIT NO. P-UP2003-4 and S-ZONE AMENDMENT P-SA2003-22) be added to the consent calendar. Commissioner Williams noted that the Commission has approved similar types of applications in the past. Ms. Heyden clarified that the applicant is contesting Condition No. 11 and that is why the item is not on consent. The Commission agreed to leave Agenda Item No. 2 off consent.

Chair Hay opened the public hearing on Consent Item Nos. 1, 3, 4, 5 and 8.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 1, 3, 4 and 5**

**Motion** to close the public hearing on Consent Item Nos. 1, 3, 4 and 5. Item No. 8 will be continued to the May 28, 2003 Planning Commission meeting.

M/S: Nitafan/Sandhu

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1, 3, 4, 5 and 8.

- \*1 USE PERMIT NO. P-UP2003-6 and S-ZONE AMENDMENT (P-SA2003-13):**  
A request to locate an approximately 11,500 square foot specialty retail store selling alcoholic and non-alcoholic beverages, gourmet food and accessories (Beverages and More) at 1210 Great Mall Drive (APN: 086-24-055). Project Planner: Troy Fujimoto, 586-3287. (PJ# 3156) *(Recommendation: Approval with Conditions)*
- \*3 USE PERMIT NO. P-UP2003-7 and S-ZONE AMENDMENT (P-SA2003-21):**  
Request to install 3 telecommunications antennas inside the church tower, and equipment cabinets in a ground enclosure, at Mt. Olive Church, 1989 E. Calaveras Blvd. (APN: 29-25-7). Applicant: Sprint. Project Planner: Annelise Judd, 586-3273. (PJ# 2320) *(Recommendation: Approval with Conditions)*
- \*4 SIX-MONTH REVIEW OF USE PERMIT AMENDMENT NO. P-UA2002-22:**  
Verification of compliance with conditions of approval and Resolution No. 449 for a restaurant with outdoor seating (a total of 28 seats indoors and outdoors) at 279 Jacklin Road (APN 29-28-029). Applicant: Mercedes Albana. Project Planner: Staci Pereira, 586-3278. (PJ#2308) *(Recommendation: Note receipt and file)*
- \*5 USE PERMIT NO. P-UP2003-9:** A request to operate a 1,200 square feet grocery store and meat market (Milpitas Halal Market), at 74 Dempsey Road (APN 88-04-001). Applicant: Al-Khafaji Hassan. Project Planner: Staci Pereira, 586-3278. (PJ# 2321) *(Recommendation: Approval with Conditions)*
- \*8 USE PERMIT NO. P-UA2002-8:** *(Continued from February 26, 2003)* A request for beer and wine sales and a reduction in the number of parking spaces required by the zoning code in conjunction with a request to add 12 seats to an existing 37-seat Tofu House restaurant. (APN 022-25-041). Applicant: Sung Ho Yoon. Project Planner: Troy Fujimoto 586-3287. (PJ#2245) *(Recommendation: Continue to May 28, 2003)*

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

## VIII. PUBLIC HEARING

Chair Hay opened the public hearing on Agenda Item No. 2.

### 1. USE PERMIT NO. P-UP2003-4 and S-ZONE AMENDMENT (P-SA2003-22): Applicant: Verizon Wireless

Ms. Heyden presented Use Permit No. P-UP2003-4 and S-Zone Amendment P-SA2003-22 which is a request to install 6 telecommunications antennas on the building roof, and equipment cabinets in a ground enclosure at Heald College, 341 Great Mall Pkwy and recommended approval with conditions. Ms. Heyden also noted that the applicant is contesting Condition No. 11 which reads the following:

- Each antenna shall be identified to denote its function, i.e., transmitter or receiver antenna. Shut down of transmitter antennas shall be provided. Contact the Fire Department for specifics on the requirements for shutdown. An indicator light shall be incorporated in the shutdown system. Shutdown procedures shall be reviewed and approved by the Fire Department.

Commissioner Williams asked, “What is the applicant’s concern”? Ms. Heyden said that the applicant wants control of shutting off the equipment in the event of an emergency instead of having the Fire Department shut off the electrical equipment.

Chair Hay asked, “How have other applicants worked out this situation with the Fire Department”? Ms. Heyden stated she was unsure given that this is worked out at the plan check level, after Commission approval, but is aware of at least two other approvals that had this same new condition and they were able to work it out with the Fire Department.

In response to **Commissioner Nitafan’s** question regarding the definition of “stealth design”, Ms. Heyden said that, “stealth is a design that is so disguised you can’t recognize what it is”.

Vice Chair Lalwani needed clarification on the third part of condition No. 11 which reads the following:

- With the issuance of a permit for installation, an inspection shall be performed by the Fire Department to verify labeling, signage and transmission shutdown. Inspection fees shall apply.

Ms. Heyden clarified that inspection fees are applied when the equipment is installed to cover the cost of inspector’s time.

Chair Hay asked “Why does the Fire department need to shut down the equipment”? Ms. Heyden said, “If the building were on fire, you wouldn’t want electric equipment, such as a cellular antenna operating due to potential hazards to emergency personnel”.

Chair Hay invited the applicant to address the Planning Commission.

**Jennifer Donnelly, representing Verizon Wireless**, noted that she has been working with the Fire Department regarding shut down procedures and noted that Fire will be trained on how to shutdown the equipment themselves.

Ms. Heyden amended Condition No. 11 to read the following:

- Each antenna shall be identified to denote its function, i.e., transmitter or receiver antenna. Shut down of transmitter antennas shall be provided. Contact the Fire Department for specifics on the requirements for shutdown. An indicator light shall be incorporated in the shutdown system if deemed necessary by the Milpitas Fire Department. Shutdown procedures shall be reviewed and approved by the Fire Department.

Chair Hay opened the public hearing.

There were no speakers from the audience.

## **Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 2.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

**Motion** to approve Use Permit No. P-UP2003-4 and S-Zone Amendment P-SA2003-22 with staff's recommended findings and special conditions noted in the staff report and amended Condition No. 11 stated above.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

## **2. AMENDMENT TO THE ZONING ORDINANCE**

**TEXT (P-ZT2003-1):** *Staff Contact: Felix Reliford, 3071*

**Felix Reliford, Principal Housing Planner**, presented an amendment to Title XI Chapter 10 (Planning, Zoning, and Annexation) of the Milpitas Municipal Code Relating to Establishing Affordable Housing Regulations and In-Lieu Housing Fee and recommended approval to City Council.

Chair Hay referenced the Tri-County Apartment Association (TCAA) letter handed out at the beginning of the meeting and asked the Commission to take time to review the letter given the detailed information outlined in the letter.

**Commissioner Galang** referenced Midtown Policy 3.6 and Policy 7.9 requiring affordable housing and asked, "If housing developments of 12 units or less require a housing fee"? Mr. Reliford clarified that some of the lots in the Midtown area are small parcels and developers would have a choice of opting out and paying a fee rather than providing the affordable units.

Commissioner Giordano asked "Why is the Commission reviewing this project at this time when the Housing Element was approved a year ago?" Mr. Reliford stated that the City wants to implement their goal of achieving the 20% of affordable housing.

Commissioner Giordano maintained her position that she disagrees with the in-lieu housing fee.

Commissioner Nitafan wanted to know why the definition of Item 54.21 –3A does not include mortgage insurance. Mr. Reliford said that it is automatically assumed that mortgage insurance is part of the process and if the Commission requests, he would include "mortgage insurance" in the definition.

Commissioner Nitafan referenced Section 54.21-8 "eligibility requirements for BMR occupants" and stated the "final selection process" should be included in the statement. Mr. Reliford said staff would not recommend putting that in the ordinance because other cities don't put this in the ordinance and it is not necessary.

Chair Hay recalled at the March 26, 2003 Planning Commission meeting, some of the Commissioners were concerned that the final selection process was biased. He asked if staff had a chance to have the attorney review the process. Mr. Reliford noted that the City Attorney has not had a chance to review it but he will report back.

Chair Hay asked if ABAG's numbers are a goal or legal requirement. Mr. Reliford replied that, "It is a goal, and no City meets 100% of its requirements". He also noted that Milpitas has met 82% of their goal and that the average for Santa Clara County is 52%.

In response to Chair Hay's question regarding redevelopment money, Mr. Reliford clarified that 20% of redevelopment dollars are set aside to go to affordable housing and 15% of the units must be affordable.

Chair Hay asked, "How is the money spent to support projects"? Mr. Reliford cited examples such as Monte Vista, Summerfield Homes and Parc Metropolitan where the City assisted with programs.

Chair Hay asked, "How does a fee waiver process work"? Mr. Reliford responded that the RDA will receive a bill from a developer and will make a check out to the City. Mr. Reliford also noted that the City negotiates with developers and comes up with an agreement with the number of units and subsidy that will be provided.

Vice Chair Lalwani noted Attachment No. 38.761 and asked, "Under the general requirements section, five or more dwelling units should provide 20% affordable housing. How does this differ from the prior rules from the Midtown Specific Plan?" Mr. Reliford replied that if a developer has 12 or fewer units, he can pay the fee or provide the units and that the money will be used as RDA funds for things such as down payment assistance or land acquisition.

**Blair King, Assistant City Manager**, clarified for the record that 15% of all units that are developed or rehabilitated must be affordable, which doesn't mean that all developments have to have 15% of the units as affordable. It is an aggregate. Additionally, RDA set asides can be spent Citywide if findings are made and an owner participation agreement is entered into. He said that, "Each developer could have 15% units of affordable housing, or 100% all in one project and that the 20% set aside is a powerful tool in meeting affordable requirements through housing production or assistance program".

In response to Chair Hay's concern, Ms. Faubion stated that there is a legal versus a generic meaning of arbitrary and capricious that the TCAA letter cites that in their opinion "adopting the ordinance would be arbitrary and capricious". She stated that the purpose of the in-lieu fee is to increase production of affordable housing and to meet city goals. She also stated that, "The City can negotiate with the developers on a case by case basis, but with no obligation from the developers to build affordable housing units, so this ordinance puts the city in a better position because it adds certainty".

Chair Hay opened the public hearing.

**Jeffrey Dennison, Government Relations Manager, representing Tri County Apartment Association**, referenced his letter that he passed out to the Commission. He stated that the City of Watsonville added an in-lieu fee in 1990 of 25% and in 10 years, they only produced 9 affordable units. Watsonville has now decided to revise the fee because it is a significant barrier. He also noted that the City of Sunnyvale has an in-lieu fee of 10% and has produced 700 to 800 units in that timeframe. They, too-recognized that an in-lieu fee does not work for Sunnyvale because it has not been that successful. The City of San Jose has studied the in-lieu fee twice, and noted that it would not work in San Jose because of high density and the cost of urban parking garages. He stated that developers like what they are getting right now and would not want to see any changes.

In response to Chair Hay's question regarding housing prices, Mr. Dennison noted that rental housing prices in Milpitas have dropped 50% in a 30-month period.

**Paul Stewart, Santa Clara County Association of Realtors**, stated that Milpitas has a good reputation for working with projects on a case-by-case basis and that having an in-lieu fee would be "arbitrary and capricious". He stated that he is against the 20% fee.

**Heidi Wolfe-Reid, resident at 1397 Yosemite Drive and member of the Santa Clara County Association of Realtors**, stated that she is against the in-lieu housing fee and feels that everything is working well and doesn't want to discourage housing production in Milpitas with this ordinance.

#### **Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 6.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Chair Hay stated that when the economy was doing really well, we had more jobs than housing and developers were developing every piece of land they could get their hands on, but that has changed. He feels that the City needs to have more flexibility and with the fee, we lose the flexibility. Chair Hay is against the fee.

Commissioner Giordano stated that she would be voting against the recommendation given that we have been efficient in the past in meeting the guidelines from the Housing Element.

Commissioner Nitafan echoed Commissioner Giordano and Chair Hay and is opposed to the in-lieu housing fee.

Vice Chair Lalwani is not in favor of the fee stating, "When you try to force people to do something, there is always a natural resistance".

Commissioner Sandhu mentioned that he would support staff's recommendation since this has been only a one-sided discussion and has not heard any opposition from the general public.

Commissioner Galang is not in favor of the proposal saying that, "We should leave as is".

**Motion** to approve the Negative Declaration for P-ZT2003-1.

M/S: Sandhu/Nitafan

AYES: 7

NOES: 0

**Motion** to recommend approval of the ordinance to City Council for P-ZT2003-1.

M/S: Williams/Sandhu

AYES: 2 (Sandhu and Williams)

NOES: 5 (Hay, Lalwani, Galang, Giordano and Nitafan)

Motion failed.

**Motion** to recommend denial of P-ZT2003-1 to City Council for the reasons discussed.

M/S: Giordano/Lalwani

AYES: 5 (Hay, Lalwani, Galang, Giordano and Nitafan)

NOES: 2 (Sandhu and Williams)

### RECESS

A ten minute recess was called at 8:50 p.m.

Chair Hay opened the public hearing on Agenda Item No. 7

Ms. Faubion requested to be excused at 9:00 p.m. and Chair Hay and the Commission agreed.

### **3. AMENDMENTS TO THE GENERAL PLAN AND MIDTOWN SPECIFIC PLAN, AMENDMENTS TO THE ZONING ORDINANCE TEXT AND MAPS, AND OF A RELATED DRAFT NEGATIVE DECLARATION (P- GM2003-1, P-ZT2003-1, P- ZC2003-1, P-EA2003-1):**

*Staff Contact: Tambri  
Heyden, 586-3280.*

Ms. Heyden presented amendments to the General Plan and Midtown Specific Plan, amendments to the Zoning Ordinance Text and Maps, and of a related draft negative declaration and mentioned how it is divided into five parts as follows:

1. Adopt a resolution approving the Negative Declaration (EIA NO. P-EA2003-1);
2. Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) relating to properly designating existing parks in the POS classification;
3. Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area;
4. Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29 and 30.
5. Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32, and 35.

Ms. Heyden also mentioned that any Commissioner who has a conflict of interest should excuse himself or herself prior to the Chair opening up the respective part of this item for discussion.

**7-1: Adopt a resolution approving the Negative Declaration (EIA NO. P-EA2003-1)**

Ms. Heyden presented adopting a resolution approving the Negative Declaration (EIA NO. P-EA2003-1) after the Chair polled the Commission for conflicts of interest with this part of the agenda item.

Ms. Heyden mentioned that the issues with the proposed text amendments in regards to aesthetics, air quality, biological resources, soils, population and housing and utilities are determined to be less than significant and the comment period for the environmental document had closed without any receipt of comments.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-1.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**Motion** to approve the Negative Declaration (EIA NO. P-EA2003-1) related to the proposed amendments.

M/S: Sandhu/Nitafan

AYES: 7

NOES: 0

**7-2: Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) relating to properly designating existing parks in the POS classification**

Commissioner Nitafan stated that he would be abstaining from the item due to his business being in close proximity of the discussed issue. Commissioner Nitafan left the Council Chambers.

Commissioner Giordano stated she would be abstaining from this item due to her property being in close proximity of the discussed issue. Commissioner Giordano left the Council Chambers.

Ms. Heyden presented a resolution for Council approval of General Plan and Midtown Specific Plan map amendments (P-GM2003-1) relating to properly designating existing parks in the POS classification. Ms. Heyden stated that the proposed public open space designation covers trails in Milpitas, as well.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-2.



M/S: Sandhu/Lalwani

AYES: 5

NOES: 0

ABSTENTIONS: 2 (Nitafan and Giordano)

**Motion** to approve a resolution recommending Council approval of General Plan and Midtown Specific Plan map amendments (P-GM2003-1) relating to properly designating existing parks in the POS classification.

M/S: Sandhu/Lalwani

AYES: 5

NOES: 0

ABSTENTIONS: 2 (Nitafan and Giordano)

Commissioner Giordano and Commissioner Nitafan returned back to the Council Chambers.

**7-3: Adopt a resolution approving General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area**

Commissioner Nitafan stated he would be abstaining from Item No. 7-3 and Item No. 7-4 due to conflict of interest due to his business being in the Midtown Area. Commissioner Nitafan left the Council Chambers.

Ms. Heyden presented a resolution for Council approval of General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area.

Ms. Heyden stated that three parcels were left out of the Midtown boundary when adopted last year that are part of the Serra Center near Junipero Drive. They are recommended to be added now.

Chair Hay opened the public hearing.

There were no speakers from the audience.

**Close the Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-3.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

ABSTENTIONS: 1(Nitafan)

**Motion** to approve a resolution recommending Council approval of General Plan and Midtown Specific Plan map amendments (P-GM2003-1) affecting the Midtown Plan Area relating to the addition of three (3) Serra Center parcels to the Midtown Specific Plan Area.

M/S: Lalwani/Williams

AYES: 6

NOES: 0

ABSTENTIONS: 1(Nitafan)

**7-4: Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29 and 30.**

Ms. Heyden presented Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting the Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29 and 30. Ms. Heyden reviewed only those items that the Planning Commission had a concern with from previous discussions and explained how they were addressed as follows:

*Item No. 8* – Staff made the change to reference stalls to indicate parking spaces. Additionally, the depth of the parking spaces shouldn't exceed two parking spaces deep.

*Item No. 19*- Since the reference to the North Midtown area is not mapped anywhere in the midtown plan, staff changed the terminology to add Transit Oriented Developments (TOD) near a one quarter mile radius near the northern BART station (on Calaveras).

*Item No. 20* – Staff changed the 10,000 square feet threshold to 5,000 square feet so that the Planning Commission would be able to review these project amendments.

*Item No. 27* – Staff changed Child Care Facility to clarify that the care took place in the caretaker's home.

*Item No. 29* – Staff changed the recommendation to mirror San Jose's 40% compact parking allowances and dimensions.

Chair Hay opened the public hearing on Agenda Item No. 7-4.

There were no speakers from the audience.

**Close the Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-4.

M/S: Lalwani/Sandhu

AYES: 6

NOES: 0

ABSTENTIONS: 1(Nitafan)

**Motion** to recommend Council approval of Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) affecting Midtown Plan Area relating to text amendment item nos. 8, 14, 19, 20, 26, 27, 28, 29 and 30.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1(Nitafan)

Commissioner Nitafan returned back to the Council Chambers.

**7-5: Adopt Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32, and 35.**

Ms. Heyden presented proposed Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32 and 35. Ms. Heyden went over each item that the Commissioners had a question on from previous discussions and explained the changes as follows:

*Item No. 1* – Staff received feedback from CEPAC, CAC, and the Telecommunications Commission which have been incorporated:

- Prohibition of guy wires for antennas over 20 feet in height from grade.
- Added color restrictions for antennas.
- Restricted number of antenna support structures to two.
- Removal of abandoned antennas.
- Prohibition of encroachment into easements.

Commissioner Williams asked if staff is restricting satellite dishes and Ms. Heyden noted that because they are preempted to a degree that they are, but only in a limited way to comply with federal law.

*Item No. 4* – Regarding 30 percent maximum rear yard coverage, staff noted the clarification for in ground spas.

*Item No. 6* – Reroofs to wood shake in the hillside and throughout the City are disallowed without Commission approval whereas tri-laminate would be staff approved.

*Item No. 7* – Staff proposed to no longer require a Use Permit if the housing density is less than 21 units an acre.

*Item No. 11* – After legal review staff proposed no changes to the proposed new system for administrative citations for zoning code violations.

*Item No. 15* – Staff overlooked MXD and has now added medical and dental offices in MXD. Also, a word change from “place” to “structure” was made.

*Item No. 18* –Staff deleted the 40-day time limit for compliance with the state law streamlining act.

*Item No. 21* – Staff amended the definition for public uses and quasi public to clarify community theaters.

*Item No. 24* – Staff researched state law and determined separate entrances for second family units cannot be prohibited. Staff added a traffic study requirement if needed. Ms. Heyden explained how utility billing for these units would have to change.

*Item No. 25* – After research of others cities, staff proposed to exclude all structured parking in Midtown from FAR, but elsewhere, only basement parking excluded from FAR.

*Item No. 32* – Staff amended the text to allow for a revocation when the use permit has been abandoned or superseded by a new use.

*Item No. 33* – Staff proposes a definition of conference centers and allowing with a CUP in MP district.

*Item No. 35* – Staff proposes allowing tutoring centers as permitted uses in the Town Center district.

Chair Hay opened the public hearing.

There were no speakers from the audience.

#### **Close the Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 7-5.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**Motion** to recommend approval of Ordinance No. 38.761 for amendments to the Zoning Ordinance text and map (P-ZT2003-1 and P-ZC2003-1) not affecting Midtown Plan Area relating to text amendment item nos. 1, 3, 4, 6, 7, 11, 13, 15, 17, 18, 21, 22, 23, 24, 25, 31, 32, and 35.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

#### **IX. NEW BUSINESS**

Chair Hay opened up Agenda Item No. 9 under New Business.

**4. RESOLUTION NO. 492 (P-AD2003-4): Staff**  
*Contact: James Lindsay,*  
*586-3274.*

**James Lindsay, Development Services Manager, and Blair King, Assistant City Manager,** presented Resolution No. 492 which is a Resolution finding the proposed Eighth Amendment to the Redevelopment Plan for Project Area No. 1 conforms to the General Plan and recommending approval of the Eighth Amendment and certification of the Environmental Impact Report to the Redevelopment Agency and City Council and recommended the Commission to adopt the resolution.

Commissioner Giordano referenced the table of contents modification on page 4 and page 24 regarding the added area and average sale price and asked how the table applies to the summary section of that document.

Mr. King noted that in the final Environmental Impact Report, the document references the preliminary report.

**Motion** to approve Resolution No. 492.

M/S: Giordano/Nitafan

AYES: 7

NOES: 0

Chair Hay opened Agenda Item No. 10 under New Business.

**5. PRESENTATION OF  
2003-2008 CAPITAL  
IMPROVEMENT**

**PROGRAM:** *Staff Contact:*  
*Mike McNeely, 586-3301*

**Mike McNeely, City Engineer**, presented the 2003-2008 Capital Improvement Program and recommended approval to Council.

Regarding Community improvements projects, Commissioner Williams asked about the timing of the various GIS layers which **Terry Medina from IS** explained that it is completed for use in police vehicles, but won't be available to the public within 12 months.

Regarding Parks projects, Chair Hay asked about the opening of the Dog Park which Mr. McNeely explained would be in 6 months.

Commissioner Nitafan commented that this year's document format seems incomplete from previous years when the back of the document contained information about unfunded future projects such as the library and Cultural Arts Center. Mr. McNeely said he would provide that information later but this focus is on conformance with the General Plan for Council adoption on May 13, 2003. He also noted that mid-year corrections could be made if funding was found, after adoption, for unfunded projects.

Commissioner Galang questioned the resurfacing of all athletic courts to which Mr. McNeely indicated that 4 major park upgrades have been prioritized first before the court re-sourcing.

Mr. McNeely mentioned, after comment from Chair Hay, that Berryessa Creek Trail Reach 3 landscaping is included although some areas cannot be landscaped due to slope and reconstruction of the levee.

Regarding street projects, Commissioner Nitafan asked whether the million dollar regional study for Calaveras overpass widening for I-680/I-880 connector was funded. Mr. McNeely explained why it was not appropriate and options, as well as discussions with Fremont.

Commissioner Williams asked about the central point traffic signal control project. Mr. McNeely explained that fiber was already under construction.

Commissioner Williams also asked about utility undergrounding at Main Street and Great Mall parkway to which Mr. McNeely asked would not be looked until the soon-to-be started Midtown implementation project. Upon request, Mr. McNeely gave an update of the 237/I-880 flyover construction to be completed in 2004.

Regarding water and sewer projects, Mr. McNeely explained that new projects don't have a CIP number.

Commissioner Williams asked if Midtown sewer improvements were included, especially for Main Street. Mr. McNeely explained that those listed impact Midtown, but are not solely for Midtown.

Regarding storm water projects, Mr. McNeely discussed upgrades to the Manor pumpstation to address under-sizing.

**Motion** to recommend approval to Council of the 2003-2008 Capital Improvement Program.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**X.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 11:15 p.m. to the next regular meeting of April 23, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

VERONICA RODRIGUEZ  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**March 26, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams  
Absent: None  
Staff: Heyden and Rodriguez

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

**Rob Means, 1421 Yellowstone**, wanted to talk about the Apton Plaza item that was pulled from tonight's agenda, but mentioned that this high-density housing area at the north end of Milpitas is not located near an LRT station and if it fit within a transit system the City wouldn't have to deal with traffic impacts at a cost of 30 million dollars. Therefore, if this development is going forward, the City should require the developer to pay 2% of the cost of such a project in case it gets built in the future.

**Chair Hay** asked staff to respond to Mr. Means regarding adding 2% of the cost the developer would pay to the City for an undefined transit-related project in the future.

**Ms. Heyden, Planning Manager**, mentioned that since this is not a current Midtown policy, she did not see how such a requirement could be made.

**IV.  
APPROVAL OF MINUTES  
March 12, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of March 12, 2003.

Chair Hay referenced Page 9 and changed the motion to appoint *Dem Nitafan* as an alternate to the City's 50<sup>th</sup> Anniversary Subcommittee.

**Commissioner Giordano** made the following changes:

- Page 3 - Commissioner Giordano had requested an *annual review* of the housing element.
- Page 3 - Commissioner Giordano stated that, "The Housing Element philosophy concerned the promotion of low and income households and that the density bonus allotments with the three options *will* satisfy the future needs of affordable housing".
- Page 5 - Commissioner Giordano asked Ms. Faubion to give her legal interpretation of the in-lieu housing fee for 20 %, *and if mandatory or goal oriented only in policy 3.6 of the Midtown Plan*.
- Page 6 - Commissioner Giordano questioned the interpretation of the policy and felt that there is not a need for the 20% fee, *since we as a City are meeting our affordable housing goals presently*.

- Page 7 - Commissioner Giordano commented that she supported the policies for the Housing Element, and also wanted to *continue to review the Housing Element annually*, but doesn't see a need for the in-lieu housing fee.

**Motion** to approve the minutes of March 12, 2003 with the changes indicated.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Williams) – Absent at the March 12, 2003 meeting.

## V. ANNOUNCEMENTS

Ms. Heyden referenced the continuance letter that was passed out regarding Agenda Item No. 3 ("S" ZONE APPROVAL NO. P-SZ2002-6, USE PERMIT NO. P-UP2002-35 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. P-EA2003-1) requesting this item be continued to the April 23, 2003 Planning Commission meeting. She also referenced a handout for Agenda Item No. 4 (AMENDMENTS TO THE GENERAL PLAN AND MIDTOWN SPECIFIC PLAN, AMENDMENTS TO THE ZONING ORDINANCE TEXT AND MAPS, AND OF A RELATED DRAFT NEGATIVE DECLARATION (P-GM2003-1, P-ZT2003-1, P-ZC2003-1, P-EA2003-1) regarding revised language for the antenna amendment.

Commissioner Giordano wanted to thank Mayor Esteves, Vice Mayor Dixon, City Council, MUSD President, Vice President and Board, City Manager and Fire Chief for their support at the March 15, 2003 Bobby Sox opening ceremony held at the Roger Yee Fields.

Commissioner Giordano congratulated the Indian Community Center at Los Coches for their grand opening held on March 16, 2003 and said, "It is a landmark for their accomplishments and the neighboring Indian communities". She also congratulated Commissioner Nitafor for coordinating the "Citizen of the Year" event saying it was well attended.

Commissioner Giordano invited the public to a legislative update that will be sponsored by the Milpitas Rotary and Chamber of Commerce that will be held at the Crowne Plaza hotel on April 21, 2003 at 11:00 a.m. and noted that congressman Mike Honda will be speaking.

She also mentioned to staff that a concerned resident from Heath Street cited an increase in traffic speed and asked staff to check the feasibility of adding speed undulators.

**Commissioner Sandhu** announced that the Sikh Foundation will be hosting their annual community breakfast on April 5, 2003 at the Sunnyhills Methodist church located at 555 Dixon road, and invited the public to attend the event which will begin at 7:00 a.m.



**VI.  
APPROVAL OF  
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes from staff, however Ms. Heyden noted that Agenda Item No. 4 has been divided into five parts and that five separate actions will be necessary. Commissioners with a conflict of interest on any action can recuse themselves from voting on the appropriate action.

Commissioner Giordano noted that she and Commissioner Nitafan would have to excuse themselves from voting on some parts of Agenda Item No. 4 (Zoning Text Amendments).

Ms. Heyden also noted that Agenda Item No. 3 (that is not on consent) has been requested by the applicant to be continued to the April 23, 2003 meeting.

**Motion** to approve the agenda.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 1 and 2  
(Added Nos. 3 and 5)**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Ms. Heyden recommended that Item No. 1 be pulled from consent due to the applicant having concerns with the recommendation.

Chair Hay noted that since Items No. 3 and 5 were continued to April 23<sup>rd</sup> and April 9<sup>th</sup>, respectively, they should be added to the consent calendar.

Chair Hay opened the public hearing on Consent Item Nos. 2, 3 and 5.

There were no speakers from the audience.

**Close Public Hearing  
Item No. 2**

**Motion** to close the public hearing on Consent Item No. 2 only.

M/S: Nitafan/Lalwani

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item 2 only.

**\*2 USE PERMIT NO. P-UP2003-5 & S-ZONE AMENDMENT (P-SA2003-15)**

**APPROVAL:** A request for building signage for a combination gas station and fast food restaurant, including a new 9.5-foot high internally illuminated freestanding sign at 1551 California Circle (APN: 022-37-040). Project Planner: Troy Fujimoto, 408-586-3287. (PJ# 2318) (*Recommendation: Approval with Conditions*)

M/S: Nitafan/Lalwani

AYES: 7

NOES: 0

**VIII.  
PUBLIC HEARING**

**1. USE PERMIT  
AMENDMENT NO. P-  
UA2003-6: *Six-month review  
of Anh Hong Saigon  
Restaurant (233 West  
Calaveras Blvd.)***

Chair Hay opened the public hearing on Agenda Item No. 1.

Ms. Heyden presented a six-month review of the Anh Hong Saigon Restaurant (233 West Calaveras Boulevard) to verify compliance with special conditions of approval associated with the Use Permit Amendment No. P-UA2002-9, including the construction of a garbage enclosure and recommended to add an additional special condition and extend the six month review for six months.

Chair Hay asked if the property owner is willing to pay for the garbage enclosure since the applicant contests construction of the enclosure and Ms. Heyden responded “No”.

**Vice Chair Lalwani** asked if the restaurant owner is responsible for adding the garbage enclosure and Ms. Heyden responded that the Use Permit is associated with the business and that the responsibility is with the tenant since it is the business that is impacting solid waste through additional seating.

Ms. Heyden also noted that the Use Permit is good for 18 months and that the tenant has another 12 months to add the enclosure since he states he needs more time to afford the construction given the economy. She also noted that two other businesses will be coming forward in the same shopping center, which might reduce the costs that the tenant will have to pay since they, too, will have a similar requirement which could be shared.

**Mike Nguyen, Applicant**, passed around a picture of the restaurant and expressed concern about building a trash enclosure. He noted that the restaurant has a BFI trash bin in place and an odorizer, and that the trash area is not a public nuisance. He doesn’t understand why staff is insisting on building an enclosure since an existing property fence screens the bin from residences, and is against it due to cost. He also noted that BFI picks up garbage twice a week.

In response to Chair Hay’s concern about lack of property owner assistance, Mr. Nguyen mentioned how difficult it is to get a hold of the owner.

Chair Hay pointed out that it is the responsibility of the Planning Commission to deal with land use issues, not the success of the business, therefore economics is not a factor the Commission considers.

Mr. Nguyen responded that if he has to build an enclosure, then a requirement should be made that everyone at the shopping center build an enclosure, since no other bin has an enclosure.

**Commissioner Nitafan** mentioned that there was also a concern of the neighbors who complained about the garbage area in the past.

Chair Hay asked if there have been recent complaints about odors and Ms. Heyden responded “No”.

**Commissioner Williams** recalled that neighbors have complained about the garbage in the shopping center before, and that there have been complaints about the property owner and lack of cooperation in resolving issues timely.

Chair Hay asked about the enclosures at the site and Ms. Heyden responded that there are about 20 bins at the shopping center and about 3 have enclosures.

Chair Hay opened the public hearing.

There were no speakers from the audience.

### **Close Public Hearing**

**Motion** to close the public hearing on Agenda Item No. 1.

M/S: Sandhu/Giordano

AYES: 7

NOES: 0

Chair Hay expressed concern that the real problem has not been addressed and that the applicant should work with the owner regarding the trash bins.

Vice Chair Lalwani asked if the landlord owns the restaurant or the entire complex and Ms. Heyden responded that the landlord owns the entire complex.

Ms. Heyden reiterated that the City doesn't require that the landlord pay for the enclosure but that the requirement is imposed on the applicant. Between them, the landlord and the applicant can reach a financial arrangement.

Vice Chair Lalwani suggested that the applicant go back to the original approved seating since they are not receiving many customers. Therefore the enclosure wouldn't be required.

Mr. Nguyen responded that the restaurant does fine on the weekends and during lunch hours. It is the weekday dinner hour that suffers.

Vice Chair Lalwani noted that the applicant might have to compromise because he will have to comply with the City's requirements.

Commissioner Galang asked if all the restaurants in that shopping center are required to have an enclosure and Ms. Heyden responded "No" because some of the restaurants existed prior to the regulations.

Commissioner Galang asked the applicant how long he has been in business and Mr. Nguyen responded "approximately 4 to 5 years".

Commission Galang asked staff if they instructed the applicant to enclose the garbage area six months before. Ms. Heyden responded that it was in the staff report but was not aware that the business owner exceeded the seating capacity since 1998 for 5 years.

**Motion** to support staff's recommendation for the six month review of Use Permit Amendment No. P-UA2002-9, including the construction of a garbage enclosure and additional special condition and extending the six month review for six months.

**2. AMENDMENTS TO  
THE GENERAL PLAN  
AND MIDTOWN  
SPECIFIC PLAN,  
AMENDMENTS TO THE  
ZONING ORDINANCE  
TEXT AND MAPS, AND  
OF A RELATED DRAFT  
NEGATIVE  
DECLARATION (P-  
GM2003-1, P-ZT2003-1, P-  
ZC2003-1, P-EA2003-1):**  
*Staff Contact: Tambri  
Heyden, 586-3280*

M/S: Giordano/Nitafan

AYES: 7

NOES: 0

Ms. Heyden noted that staff has tried to resolve issues with the landlord, but will work with the other applicants to see if they will all split the costs.

Commissioner Nitafan noted that he just recently received his attachments for Agenda Item No. 4 and did not have a chance to review them.

Ms. Heyden apologized and mentioned that she will look into what occurred.

Chair Hay deferred to his fellow Commissioners and stated that if Commissioner Nitafan feels uncomfortable, then this item should be continued.

Commissioner Nitafan recommended a **Motion** to continue this item to the April 9, 2003 meeting and Commissioner Galang seconded it.

Commissioner Giordano stated that she will support the motion and asked if the affordable housing in-lieu fee is part of Agenda Item No. 5 and Chair Hay responded "Yes".

Commissioner Giordano mentioned that she has a few questions and asked if she could ask staff so they can report back at the next meeting.

Chair Hay stated that if the maker and the second of the motion don't mind then it is fine and Commissioner Nitafan and Commissioner Galang agreed and withdrew the motion.

Commissioner Giordano asked about the color restrictions for the antennas and asked what colors staff is looking for. She also asked if eliminating wood shake in the hillside means also on the valley floor and also asked staff to find out if there are any utility rate adjustments needed for second family units. Ms. Heyden responded that she is prepared to answer those questions. However, since this item is going to be continued, she will provide the answer at that time.

**Motion** to continue Agenda Item No. 4 (AMENDMENTS TO THE GENERAL PLAN AND MIDTOWN SPECIFIC PLAN, AMENDMENTS TO THE ZONING ORDINANCE TEXT AND MAPS, AND OF A RELATED DRAFT NEGATIVE DECLARATION (P-GM2003-1, P-ZT2003-1, P-ZC2003-1, P-EA2003-1) to the April 9, 2003 Planning Commission meeting.

M/S: Nitafan/Galang

AYES: 7

NOES: 0

**IX.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:20 p.m. to the next regular meeting of April 9, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

VERONICA RODRIGUEZ  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**March 12, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Hay, Lalwani, Galang, Giordano, Nitafan and Sandhu  
Absent: Williams  
Staff: Faubion, Heyden and Rodriguez

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.  
APPROVAL OF MINUTES  
February 26, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of February 26, 2003.

**Tambri Heyden, Planning Manager**, noted that the motion for New Business Item No. 1 on page 4 for number of ayes should be changed from 7 to 5, and that on page 5, the number of ayes should be changed from 7 to 6.

**Motion** to approve the minutes of February 26, 2003 with the changes indicated.

M/S: Lalwani/Sandhu

AYES: 6

NOES: 0

**V.  
ANNOUNCEMENTS**

Ms. Heyden announced that during the Commission's recent discussion of the Great Mall parking annual supply/demand study, staff indicated they would field verify whether all the black outlining of the white directional sign lettering had been completed. Staff performed a site visit and work is complete.

**Commissioner Nitafan** invited the public to the awards dinner celebration at the Milpitas Community Center that will be held on Saturday, March 15, 2003 at 6 p.m. for the Citizen of the Year, Firefighter of the Year, and Policeman of the Year and noted that the price is 30 dollars per person. Chair Hay asked if registration forms were available tonight and Commissioner Nitafan said "Yes".

**Commissioner Galang** responded back to staff's inquiry on the type of satellite dishes in his home discussed at the February 26, 2003 meeting and replied that he has Direct T.V. and a satellite dish to receive Filipino stations.

**VI.  
RECOGNITION OF  
FORMER ASSOCIATE  
PLANNER MARINA  
RUSH**

Chair Hay recognized former **Associate Planner Marina Rush** noting Marina's accomplishments with the City and the Planning Commission, and thanked Marina for all her hard work. Chair Hay also gave Marina a certificate of appreciation and a bouquet of flowers.

Ms. Rush thanked City Council and the Planning Commission saying, "The City of Milpitas was an exciting place to work for and a wonderful City. It was a hard decision to leave, but I am on to the next segment of my life".

**RECESS**

A 15-minute recess was called at 7:15 p.m. for cake and refreshments.

The meeting resumed at 7:30 p.m.

**VII.  
APPROVAL OF  
AGENDA**

Chair Hay called for approval of the agenda.

There were no changes to the agenda.

**Motion** to approve the agenda.

M/S: Sandhu/Lalwani

AYES: 6

NOES: 0

**VIII.  
CONSENT CALENDAR  
Item Nos. 1 and 2**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Hay opened the public hearing on Consent Item Nos. 1 and 2.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 1 and 2**

**Motion** to close the public hearing on Consent Item Nos. 1 and 2.

M/S: Nitafan/Sandhu

AYES: 6

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1 and 2.

**\*1 USE PERMIT NO. P-UA2002-21:** Request for reduction in the number of parking spaces required by code to add 24 seats and beer and wine sales at 89 S. Park Victoria Drive (APN 88-04-048). Applicant: Yuri Tofu House. Project Planner: Staci Pereira, 583-3278. (PJ #2306) (*Recommendation: Approval with Conditions*)

**\*2 USE PERMIT NO. P-UA2003-1 and 'S' ZONE AMENDMENT NO. P-SA2003-14:** A request to operate a year round Farmer's Market (APN 28-13-015) in the Milpitas Town Center East front parking lot twice a week. Applicant: Pacific Coast Farmer's Market Association. Project Planner: Kim Duncan, 586-3283. (PJ# 2317) (*Recommendation: Approval with Conditions*)

M/S: Nitafan/Sandhu

AYES: 6

NOES: 0

**IX.  
NEW BUSINESS**

Chair Hay introduced Agenda Item No. 1 under New Business.

**1. ZONING ORDINANCE  
TEXT AMENDMENT NO.  
P-ZT2003-1 (ORDINANCE  
NO. 38.761): Staff Contact:  
Felix Reliford, 586-3071**

**Felix Reliford, Principal Housing and Neighborhood Preservation Manager,** presented the Zoning Ordinance Text Amendment No. P-ZT2003-1 (Ordinance No. 38.761) and discussed the proposed ordinance regarding affordable housing and in-lieu housing fee and mentioned that no action was required from the Planning Commission other than to provide guidance and direct staff to proceed with the zoning code amendment presented. Mr. Reliford mentioned that the City's goal is to achieve 20% of affordable housing in developments and noted that staff had met this morning with the Santa Clara County Association of Realtors who are against the 20% as a requirement.

**Commissioner Giordano** reiterated the fact that she had requested an annual review of the Housing Element and asked if the goals that were set out then were achieved. Mr. Reliford replied that the City was required to meet ABAG's requirements of 400 units and that 25% of that goal has been met. He said the City is on target so far but the economy is what determines housing.

Commissioner Giordano asked what started the in-lieu housing fee requirement and Mr. Reliford responded that the Midtown Plan required an in-lieu housing fee and staff expanded the policy to include projects outside Midtown for fairness, so that affordable housing can be distributed equally throughout the community.

Commissioner Giordano referenced Policy Number 3.6 and questioned how a goal could be made mandatory. Mr. Reliford responded that a determination has not been made yet and that the 20% is only a recommendation.

Commissioner Giordano stated that, "The Housing Element philosophy concerned the promotion of low and income households and that the density bonus allotments with the three options will satisfy the future needs of affordable housing". Mr. Reliford responded that staff reviewed the Midtown and General Plan, and that the City will continue to target 20% of units in multi-family residential projects on a project by project basis.

Chair Hay commented that he and Commissioner Williams served on the Midtown Subcommittee and given the uniqueness of the properties, the focus was deliberate to have flexibility with developers in the area.

Commissioner Nitafan whether the city's affordable housing complies with the state. Mr. Reliford replied that the City is less than a third of the way to building low and very low housing units and that with moderate and above housing, the market takes care of itself. He said that low and very low housing requires subsidy and it is hard for developers to come to the table. The process has to be fair and equal with both sides and currently there is 20 million dollars allocated for affordable housing.



Commissioner Nitaan asked if we are now in compliance and Mr. Reliford responded that the City has from now to the year 2006 to be in compliance and that no city builds all of its units. The average affordable housing built in Santa Clara County is 52 % and in the City of Milpitas it is 80% affordable housing.

Commissioner Nitaan referenced Section 54.21-8 and asked what would happen if the purchasers maintain a Below Market Rate (BMR) dwelling as a primary residence and Mr. Reliford responded that the City does not want a scenario where we have legal agreements to enforce and we try to match that income.

Commission Nitaan asked if a purchaser who is the primary owner would be able to rent out the property and Mr. Reliford responded that this defeats the purpose for first time homebuyers to allow them to rent out that unit. They would have to certify that they live there every year so they can't make a profit because that is against regulations.

Commissioner Nitaan asked how the city monitors that owners are living in their BMR dwelling and Mr. Reliford responded that every year staff certifies that people are living there by checking their W2 forms, water bills and utility bills. Commissioner Nitaan asked what would happen if the owner is not occupying the residence and Mr. Reliford responded that legal action would be taken.

Commissioner Nitaan asked about maintaining the property for 30 years and Mr. Reliford responded that 30 years has been recommended to maintain the city's investment.

Commissioner Nitaan asked if in ten years, the next-door unit is selling for more money and the BMR home is selling for less, how the problem is alleviated. Mr. Reliford responded that everything is done confidentially and that developers are not allowed to cut back. The units should look exactly the same on the outside except for maybe a smaller size.

Commissioner Nitaan inquired about titles and CC&R's and Mr. Reliford responded that the City never looks at anyone's CC&R's.

**Vice Chair Lalwani** asked if the in-lieu housing fee was started because of Midtown and Mr. Reliford responded, "Yes".

Vice Chair Lalwani asked how this compares with other cities and Mr. Reliford responded that a lot of cities have in lieu housing fees and some of them have inclusionary zoning which can be anywhere from 5% to 30%. The higher the number the more affordable housing you have.

Vice Chair Lalwani inquired about San Jose or Fremont and Mr. Reliford responded that he has a list of 16 cities and will bring it back to the Planning Commission.

Commissioner Galang asked if the 20% housing fee is only in the Midtown Plan and Mr. Reliford responded that the Midtown Plan and the General Housing Element target at least 20% in all developments.

In response to Commissioner Galang, Mr. Reliford responded that currently, Terrace Gardens, Monte Vista, Parc Metro West and Parc Metro condos all have a low interest loan. He stated that the concept behind that was to have affordable housing for first time buyers.

Commissioner Galang asked who benefits from this and Mr. Reliford responded that the City and HUD benefits.

**Commissioner Sandhu** asked what system is used to monitor the units that are low income. Mr. Reliford referenced Section 54:21-8 and stated that the goal is to establish requirements in regards to fair housing laws. He said it is separated into three categories, Milpitas residents, Milpitas workers and others. There is a lottery that is held along with a list that is sent to the lender.

Commissioner Sandhu asked what is the experience of the city if you fund directly to the people instead of the developer and Mr. Reliford responded that the program is a combination of both.

Chair Hay asked if the 20% is mandatory now and Mr. Reliford responded “No”.

Chair Hay asked how you attain flexibility if it is mandatory and Mr. Reliford responded that if the developer doesn’t provide the units, he provides a fee and when this ordinance goes before the Council, a resolution will state the justification for the fee.

In response to Chair Hay’s question, Mr. Reliford replied that we currently have no in-lieu fee and we don’t collect money from developers.

**Kit Faubion, City Attorney** mentioned that the concern here is two fold. The draft presented tonight has a 20% basis for comparison target as a goal, and it is clear that 20 percent is a policy of the Midtown plan, which makes sense to have that target. She said that the intent is to protect the ordinance from being arbitrary but to keep it as a live tool.

Commissioner Galang voiced his concerns that the random lottery for the affordable housing should be done after the credit check so that applicants can be treated fairly. Mr. Reliford assured the Commission that the lottery is a fair process and that the lender does the background check. Commissioner Nitafan, Vice Chair Lalwani and Commissioner Sandhu all agreed with Commissioner Galang that there might be a better way than the current lottery process and Chair Hay asked Mr. Reliford to check on the process and report back.

Commissioner Giordano asked Ms. Faubion to give her legal interpretation of the in-lieu housing fee for 20 %, and if mandatory or goal oriented only in policy 3.6 of the Midtown Plan.

Ms. Faubion commented that policy 3.6 says there should be affordable housing units. If an in-lieu fee is going to be substituted, the City should say that there should be an equitable substitute. Allowing fees allows other cities to use the fees to leverage to provide affordable homes.

Commissioner Giordano asked if the park fees are part of the development program and felt that the 20% fee should not be mandated.

Ms. Heyden summarized that the ordinance puts in writing the flexibility the development community has enjoyed and codifies our practices. She stated that we have been successful in reaching the goal of 20% and it allows us an exception process. The exceptions are included in the paragraph which documents the kinds of things that benefit the community.

Chair Hay asked what would the City require if a developer wanted to provide a day care center in his development in exchange for a 10% reduction in affordable housing and Mr. Reliford responded that in that case, an in-lieu fee would not be required.

Chair Hay commented that it is arbitrary whether or not a day care facility is worth the ten percent or five percent of the facility. Mr. Reliford responded that it is negotiated and that such a developer would be allowed to do mid to low and moderate affordable housing.

Chair Hay asked what has been done in the past to retain flexibility and Mr. Reliford responded that affordability was negotiated.

Chair Hay asked if properties are small, does it lend to high-density development and Mr. Reliford responded that most cities have some form of a fee or inclusionary requirement or both to offset.

Chair Hay asked if there are provisions for a fee waiver and Mr. Reliford responded "Yes".

Chair Hay asked what happens if a project doesn't meet the ordinance and Mr. Reliford responded that it would not exclude the developers from paying the fee.

Ms. Faubion clarified that if a childcare center equated to 12% of the fee, the applicant would have to backfill the other 8% for a total of 20%.

Commissioner Giordano questioned the interpretation of the policy and felt that there is not a need for the 20% fee, since we as a City are meeting our affordable housing goals presently.

Chair Hay reiterated the fact that the 20% fee would be mandatory.

Ms. Heyden noted that the purpose of the policy is to standardize current practices so that an applicant can determine up front the financial impact early in the development process. She summarized the policy stating that the intent is that the developer can a) provide the 20% or b) entire 20% satisfied in fee or c) if less than the 20% is affordable housing then the rest can be paid in fee, or d) any combination of fee and improvement of public benefit or e) an improvement of public benefit equivalent to the full 20%.

Since this item was not a public hearing, Chair Hay asked if anyone in the audience wished to speak on this subject.

**Heidi Wolfe-Reid, resident at 1397 Yosemite Drive and member of the Santa Clara County Association of Realtors** felt that the City has done a wonderful job with affordable housing, but doesn't understand why we are trying to make market housing more expensive and mandating it. She disagrees with the 20% in-lieu housing fee and doesn't feel we should try to implement new policies when the old policies have worked just fine.

Chair Hay asked Ms. Wolfe-Reid if she is opposed to making the in-lieu fee mandatory and Ms. Wolfe-Reid responded, "Yes". Ms. Wolfe-Reid also commented that we have flexibility now, and by implementing a mandate, we take away flexibility and that a lot of the moderate and low income housing is being taken care in the market already.

**Paul Stewart, Executive Director of the Santa Clara County Association of Realtors** felt that Milpitas has achieved 82% of the housing goal and he always asks other cities to look at Milpitas to see how things are done with affordable housing, but feels that the in-lieu fee shouldn't be mandated. Mr. Stewart gave an example of how Sunnyvale has had a BMR program since 1980 and that Sunnyvale has only built 872 affordable units. Mr. Stewart felt that "If ain't broken, why are you trying to fix it", and that "only the government would take something that is working perfectly fine and try to change it". He disagrees with the in-lieu housing fee.

Commissioner Nitafan made a motion to close the public hearing and Mr. Reliford reminded him that this item is not a public hearing.

Commissioner Giordano commented that she supported the policies for the Housing Element, and also wanted to continue to review the Housing Element annually, but doesn't see a need for the in-lieu housing fee.

Commissioner Nitafan felt that the information given tonight is premature and feels the City should stick with current policies. Commissioner Nitafan also commented that he would support the fee only if the developers are willing to do what we have been doing in the past. He also reiterated for staff to check on the current lottery system so that everyone is treated fairly and that no one is being discriminated against.

Commissioner Sandhu commented that he would support the in-lieu housing fee and also agreed that staff should look into the lottery system so that it is non-discriminatory. He mentioned how he has heard comments from people on how they have applied for homes and did not get a response from the City. Mr. Reliford assured Commissioner Sandhu that he always returns phone calls.

Commissioner Galang agreed with Commissioner Giordano and Commissioner Nitafan that tonight's information is premature. He also asked staff to check into the current lottery system.

Chair Hay commented that the City has been very successful so far and that this fee might make us liable. He noted that there is an issue of market rate housing and overpriced housing. When demand exceeds supply, the price goes up and that is what occurred in this valley. He doesn't see a need for it and he sees it as a negative impact to the market rate.

**2. CITY'S 50<sup>TH</sup>  
ANNIVERSARY  
SUBCOMMITTEE:** *Staff*  
*Contact: Tambri Heyden,*  
*586-3280*

Mr. Reliford commented that there is nothing magical about 20%, and that it is only a goal. Chair Hay said that he doesn't have a problem with 20%, but feels it is a problem with taking away the flexibility we currently have.

Chair Hay opened Agenda Item No. 2 under New Business.

Chair Hay noted that the basic job of the Subcommittee members is to recommend a plan for Council for the January 26, 2004 celebration. The Subcommittee members would have to meet for a total of six meetings throughout the year to brainstorm ideas and prioritize plans for City Council.

Chair Hay noted he was contacted by the City Manager's Office to select a volunteer by tonight and that he spoke with Commissioner Williams (who is absent tonight) that he would like to volunteer for the Subcommittee, and as Chair, he is appointing Commissioner Williams.

Vice Chair Lalwani expressed her desire to work with the subcommittee and mentioned that she would like to volunteer.

Commissioner Sandhu stated that since this item is on the agenda, the Commission should select a member.

Chair Hay stated that Commissioner Williams would be leaving the Commission at the end of the year (after his term expires), and felt he should be selected as the volunteer.

After further discussion, the Commissioners decided to vote for Commissioner Williams or Vice Chair Lalwani.

**Motion** to appoint Vice Chair Lalwani as the volunteer for the City's 50<sup>th</sup> Anniversary Subcommittee.

M/S: Sandhu/Galang

AYES: 3

NOES: 3 – (Hay, Giordano, Nitafan)

**Motion** to appoint Commissioner Williams as the volunteer for the City's 50<sup>th</sup> Anniversary Subcommittee.

M/S: Hay/Giordano

AYES: 3

NOES: 3 – (Galang, Lalwani, Sandhu)

Ms. Heyden stated that she really felt that the City would not object to have more than one volunteer.

Vice Chair Lalwani objected to the whole process of the Chair having already made an appointment without Planning Commission action on it and asked if staff could follow up and see if more people can volunteer.

Ms. Faubion stated that it is within the purview of the Commission to vote and since a tie vote ensued and there has not been a change to the situation under the Bylaws the chair can decide. Since the Chair appointed Commissioner Williams, the decision that the Chair was asked to make stands.

Vice Chair Lalwani stated her position fthat the process is unfair.

Chair Hay stated that he would like to appoint an alternate.

**Motion** to appoint Commissioner Nitafan as an alternate for the City's 50<sup>th</sup> Anniversary Subcommittee.

M/S: Nitafan/Giordano

AYES: 5

NOES: 0

ABSTENTIONS: 1 (Lalwani)

**X.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:50 p.m. to the next regular meeting of March 26, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

VERONICA RODRIGUEZ  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**February 26, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Lalwani, Galang, Giordano, Hay, Nitafan, Sandhu and Williams  
Absent: None  
Staff: Faubion, Heyden and Rodriguez

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

**Ed Connor, resident at 1515 N. Milpitas Boulevard**, thanked the Commission and staff for going ahead with the decision from the February 5, 2003 Planning Commission meeting, of having the Telecommunications Commission review the amateur radio antenna proposal.

**IV.  
APPROVAL OF MINUTES  
February 5, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of February 5, 2003.

**Tambri Heyden, Planning Manager**, noted errors on page 3, paragraph 3 of the minutes and made the following changes.

SEC required regulations should be changed to "*FCC required regulations*" and one being anchored should be changed to "*ones being anchored*". Ms. Heyden also noted an error on page 3, paragraph 8 and changed George Burns to "*George Washburn*".

**Commissioner Giordano** noted an error on page 4, paragraph 6, changing Resident of 2070 Stratford Drive to "*Lou Anne McKeefery of 2070 Stratford Drive*".

**Motion** to approve the minutes of February 5, 2003 with the changes indicated.

M/S: Giordano/Galang

AYES: 7

NOES: 0

**V.  
ANNOUNCEMENTS**

Ms. Heyden announced that Marina Rush, Associate Planner, has resigned from her position with the City after a six-month leave to be with her family. **Chair Hay** asked staff to invite Mrs. Rush to a Planning Commission meeting to be recognized for her wonderful service and Ms. Heyden agreed to agendize the celebration for a future meeting.

Ms. Heyden noted the status of following projects:

- Apton Plaza Apartments mixed use project in Midtown will be agendized for the March 26, 2003 Planning Commission meeting.
- The Lockheed property, on the north side of Curtis Avenue called Park North, a high-density residential project, will be coming to the Planning Commission in May.
- An in-lieu housing fee ordinance will be coming to the March 12, 2003 Planning Commission meeting.
- A contract with a consultant is in negotiations to implement the first phase of Midtown, which would include preparation of a precise plan, gateway entry feature design, additional building sign guidelines and streetscape conceptual plans for Main Street. Ms. Heyden noted that if the contract is executed, certain products will be coming to the Planning Commission for input in the future.

Ms. Heyden also updated the Commission on the Home Depot six-month appeal process, which is going back to City Council on March 18, 2003. She noted that the task force has been successful with Home Depot to get landscaping along Great Mall Drive as an alternative to the screen wall.

Commissioner Giordano reported that she and Councilmember Livengood attended the final meeting of the Los Esteros architectural treatment design meeting for the Calpine Power Plant off route 237, and noted that the final draft will be presented. Commissioner Giordano also announced that she and Commissioner Lalwani attended the Public Official Housing Leadership on February 12, 2003 and brought back handouts. She noted that the next luncheon will be held on May 7, 2003.

Commissioner Giordano noted that she had received the Arts Commission minutes for the first time and asked if staff will be providing these minutes for Commissioners for future meetings. Ms. Heyden was unaware that the Commission was receiving the minutes and mentioned that she would get back to her at the next meeting.

Commissioner Giordano noted that the Arts Commission minutes stated that the "Percentage for Public Art" concept be taken to the Planning Department and the Planning Commission and asked staff if they knew anything about this. Ms. Heyden replied that it is a Midtown policy and when implemented in the future it would involve the Planning Commission.

Commissioner Giordano also mentioned that the City Council minutes stated that a committee will be formed for the City's 50<sup>th</sup> Anniversary and asked if the Planning Commission would have a representative. Ms. Heyden replied that she would report back on this.

Commissioner Lalwani announced that the Chamber of Commerce will be having a Crab Feed on February 28, 2003 starting at 5 p.m., and those interested should call the Chamber of Commerce for tickets at 262-2613.

## **VI. APPROVAL OF AGENDA**

Chair Hay called for approval of the agenda.

There were no changes to the agenda.

**Motion** to approve the agenda.



M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 1, 2, 3 and 4**

Chair Hay asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Hay opened the public hearing on Consent Item Nos. 1, 2 and 3.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 1, 2 and 3**

**Motion** to close the public hearing on Consent Item No. 1. Consent Item No. 2 to be continued to the April 9, 2003 Planning Commission meeting and Consent Item No. 3 to be continued to the March 12, 2003 Planning Commission meeting.

M/S: Nitafan/Sandhu

AYES: 7

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 1, 2, 3 and 4.

**\*1 USE PERMIT NO. P-UP2002-28 AND "S" ZONE APPROVAL-AMENDMENT P-SA2003-16:** Request to install six telecommunications antennas within a roof screen and built-up parapet, and three ground-mounted equipment cabinets within fence enclosure at 1102 Pecten Court (APN 92-08-078). Applicant: AT&T Wireless. Project Planner: Annelise Judd, (408) 586-3273. (PJ #2302) *(Recommendation: Approval with Conditions)*

**\*2 USE PERMIT NO. P-UP2002-8:** A request to increase seating from 37 to 49 for an existing restaurant (Tofu House), add on-site beer and wine sales, and approve a parking reduction in conjunction with the increase in seating at 231 West Calaveras Boulevard (APN:022-25-041). Applicant: Sung Ho Yoon. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #2245) *(Recommendation: Continue to April 9, 2003)*

**\*3 USE PERMIT NO. P-UA2002-21:** Request for a parking reduction to add additional seating and beer and wine sales at 89 S. Park Victoria Drive (APN 88-04-048). Applicant: Yuri Tofu House. Project Planner: Staci Pereira, 583-3278. (PJ #2306) *(Recommendation: Continue to March 12, 2003)*

**\*4 S-ZONE AMENDMENT NO. P-SA2003-9:** A request for a sign program for a multi-tenant building and signage for a Starbucks at 1541 California Circle (APN: 022-37-002). Applicant: Delta Signs. Project Planner: Troy Fujimoto, 408-586-3287. *(Recommendation: Approval with Conditions)*

M/S: Nitaflan/Lalwani

AYES: 7

NOES: 0

## VIII. NEW BUSINESS

**1. ZONING ORDINANCE  
TEXT AMENDMENT NO.  
P-ZT2003-1 (ORDINANCE  
NO. 38.761), GENERAL  
PLAN MAP  
AMENDMENT NO. P-  
GM2003-1 AND ZONING  
MAP AMENDMENT NO.  
P-ZC2003-1:** Staff contact:  
Tambri Heyden, Planning  
Manager, 586-3280.

Chair Hay introduced Agenda Item No. 5 under New Business.

Ms. Heyden indicated that this item would be separated into 3 different presentation, discussion and actions in the following order:

1. Amendments to the General Plan and zoning maps properly designating existing parks in the POS classification and;
2. Adding the remainder of the Serra Center to the Midtown Area and those portions of Ordinance No. 38.761 regarding Zoning Ordinance Amendments affecting Midtown and;
3. Discussion of proposed Ordinance No. 38.761 regarding miscellaneous zoning code text amendments not affecting Midtown.

**Commissioner Nitaflan** announced that he would be abstaining from Item No. 1 and Item No. 2 due to a conflict of interest and Commissioner Giordano announced that she would be abstaining from Item No. 1 only due to a conflict of interest. At this moment, both Commissioners left the Council Chambers.

After presenting part No. 1, Chair Hay asked if the Commissioners had any questions.

There were no questions from the Commissioners.

**Motion** to concur with staff's direction regarding the amendments to the General Plan and zoning maps properly designating existing parks in the POS classification.

M/S: Williams/Lalwani

AYES: 5

NOES: 0

After the vote on part No. 1, Commissioner Giordano walked back into the Council Chambers and seated herself at the dais.

Ms. Heyden presented the Serra Center piece of Part No. 2, summarizing that Zoning Amendment Nos. 8, 14, 19, 26, 27, 28, 29 and 30 were also part of Part No. 2 and presented each amendment.

*Item No. 8 - to allow tandem parking for residential uses in MXD projects, R3 and R4 districts and prohibit for non-residential or guest parking requirements.*

*Item No. 14 – Add duplexes to prohibited uses in the MXD District and add language to close loophole if parcel is less than 20,000 SF.*

*Item No. 19 – Amend the TOD parking provisions to state the 20% parking reduction is for MXD-TOD. Chair Hay asked if R4 was being taken out of Midtown and Ms. Heyden replied, “No”, that this change corrects a typo since there is no R4-TOD in Midtown, only R4.*

*Item No. 26 – Delete large family day care homes from conditional uses sections of R1, R2, R3, R4 and MXD and add as permitted or accessory uses in those districts. In addition, include reference to the child care standards in Subsection 54.16 (General Provisions). Chair Hay asked if the definition is as per state code and Ms. Heyden responded, “Yes”. Chair Hay asked if a commercial child care center provides a Use Permit and Ms. Heyden replied “Yes”.*

**Commissioner Williams** asked if this change would increase the chance of family childcare centers impacting the neighborhood. Ms. Heyden responded that when an administrative application is submitted, parking would be evaluated. Also, the change includes a distance separation to avoid a concentration.

*Item No. 27 – Revise definition of family day care home to list large family child care homes as caring for 9 to 14 children (used to be 7 to 12) and small family child care homes as caring for up to 8 children (used to be 6).*

*Item No. 28 – Move language in 7.14 and add to General Provisions in 54.19 so that it will apply to all zoning districts where rental housing is allowed.*

*Item No. 29 – Allows up to 50 percent of total required parking to be compact stalls in these districts, however, not allowed for non-residential, guest parking and for parking garages with more than 8 stalls. Commissioner Williams asked how the 50 percent came about to which Ms. Heyden responded that it was not based on anything in particular. Commissioner Williams then mentioned that sport utility vehicles make for tight parking and feels that 50% may be too high. Ms. Heyden replied that staff will research this item in more detail.*

*Item No. 30 – Add FAR’s for C2-TOD of 100% and M2-TOD of 40% to the TOD Overlay District development standards.*

**Motion** to concur with staff to add the remainder of the Serra Center to the Midtown Area and continue processing those portions of Ordinance No. 38.761 regarding Zoning Ordinance Amendments affecting Midtown with the change to Item No. 29 discussed above.

M/S: Giordano/Galang

AYES: 6

NOES: 0

After the vote on Part No. 2, Commissioner Nitafan walked back into the Council Chambers and seated himself at the dais.

Ms. Heyden presented Part No. 3 and presented the remaining amendments in proposed Ordinance No. 38.761 regarding miscellaneous zoning code text amendments not affecting Midtown.

*Item No. 1 – Antennas.* In addition to describing this amendment, Ms. Heyden gave an update on the Commission's requested input on this amendment from the CAC, Telecommunications Commission and CEPAC. She noted that the CAC's workplan will not allow them to review the HAM radio antenna item in March, and that CEPAC doesn't meet again until April, but their liaison didn't feel this issue was appropriate for review. She also indicated that input from the Telecommunications Commission was received on February 24<sup>th</sup> and they wanted more time (2-4 months) to study this, but did say they didn't want to see a height limit, given cost of crank up towers, a number of antennas limit out a restriction on rental apartments and guy wires.

Commissioner Williams asked if Mr. Washburn has been able to review the proposal and Ms. Heyden responded that Mr. Washburn drafted the bulk of the proposal.

Commissioner Williams mentioned the restriction on mast heights and mentioned that to have a crank on a mast to raise or lower it would be very expensive. Ms. Heyden indicated the cost ranged from \$1,200 to \$16,000.

Commissioner Giordano asked about the color of antennas and Ms. Heyden responded that the Telecommunications Commission appreciated aesthetics but are more concerned with technical issues. She also mentioned that staff will look into adding a restriction.

Commissioner Nitafan asked if the Telecommunications Commission disagreed with the 25-ft. height restriction and Ms. Heyden responded that they did not want to see a height restriction. Commissioner Nitafan felt the Hillside antenna material should be seen at night and Ms. Heyden responded that staff would have to look into adding a restriction.

Commissioner Galang asked if a resident is allowed to have 3 satellite dishes and Ms. Heyden responded not under the current proposal, but staff would revise it.

Chair Hay asked if a civil engineer has to approve any tower or mast installation and Ms. Heyden responded "Yes" and noted that the building department requires this, but would get clarification.

Chair Hay asked about towers and masts being no closer than 10 feet from the property line and Ms. Heyden noted that an accessory structure cannot be any closer than 3 feet from the property line.

Chair Hay asked if an operator of a radio facility needs to be licensed by the FAA and Ms. Heyden responded "Yes".

After discussion regarding whether or not to proceed with the antenna amendment given that not all requested Commissions will have completed their review by the March 26, 2003 public hearing, consensus was reached to keep moving forward and make the decision when the amendment goes to Council in May.

*Item No. 3 - Main building setback from wall (want to retain eaves setback for accessory structures only).* Commissioner Nitafan asked how many feet would there typically be from the wall of an accessory structure to the property line and Ms. Heyden replied "4.5 ft."

*Item No. 4 – To exclude in-ground pools and spas from the 30% rear yard coverage for accessory structures.* Chair Hay mentioned that staff might want to include in ground spas. Ms. Heyden agreed to add in-ground spas where in-ground pools are mentioned.

*Item No. 6 – Allow tri-laminate composition except in the hillside.* Commissioner Nitafan asked what type of material is allowed in the hillside, and Ms. Heyden replied “tile and wood shake, but no asphalt of any kind”.

Commissioner Giordano mentioned that tri-laminate material is extremely thick and is fire retardant and very top quality. She does not understand why this material would be excluded from the hillside and Commissioner Nitafan and Commissioner Lalwani agreed. Consensus was reached to have staff revise this item to allow tri-laminate in the Hillside, disallow woodshake throughout the City, and to bring tri-laminate samples to the March 26, 2003 Planning Commission meeting.

*Item No. 7 – policies implementing Housing Element: a) Town Center – no longer require a Use Permit for Multi-Family Housing b) Revise density bonus overlay to comply with state law; c) Allow group dwellings – expand definition and allow in MXD, R3 and R4.*

Commissioner Nitafan asked about density and Ms. Heyden replied that density is the number of units per acres and that gross density allows adjacent density right-of-way to be included.

Consensus was reached to revise Town Center to allow multi-family housing as a permitted use if there was a minimum density of about 20 units per acres.

*Item No. 11 – Adds an administrative citation process similar to the Neighborhood Preservation Ordinance (NBO).* After discussion from the Commission, staff was directed to increase number of days from 15 to 31, change one year to 12 months so no confusion of calendar year vs. fiscal year, include an automatic inflationary fine increase each year, check with Building Department to see if a building permit can be held up on a property if there is a zoning violation and mention other city remedies to lack of fine payment besides 10% penalty, such as liens and collection agency referral.

*Item No. 13 – C1 – specify front setback of 20 feet.*

*Item No. 15 – Distinguish between medical and dental offices, clinics and laboratories in all Commercial and Industrial districts.* Commissioner Nitafan asked if this still includes acupuncture and Ms. Heyden responded “Yes”.

*Item No. 17 – Subcommittee approval of Temporary Trailers if standards can't be met.*

*Item No. 18 – Council final authority on hillside variances.* Staff will report back to explain why 40-day reference was deleted.

*Item No. 19 – Correct typo regarding R4-TOD in north Midtown.* Chair Hay suggested describing in Section 43.06-2 what is meant by North Midtown.

*Item No. 20 – Reflect approval authority for S-Zone Amendments in MXD.* After a suggestion by staff to change the 5,000 sq.ft. building addition threshold for Planning Commission review to a percentage of existing building size and make it cumulative over time, consensus was reached to have staff make this change.

*Item No. 24 – Allow second family units as permitted uses.* Commissioners' Giordano and Nitafan made comments regarding requiring one of the units to be occupied by the property owner. Ms. Heyden suggested disallowing a separate entrance to the second family unit. Consensus was reached to have staff report back to see if Assembly Bill 1866 provides a definition of second family units. If it doesn't then staff shall amend the definition to disallow a separate entrance and in 6.13, add "at time of application".

*Item No. 25 - FAR and excluding sub-terranean and partial sub-terranean parking.* After much discussion regarding the impact of this change on the value of land, Ms. Heyden suggested that staff study further by looking at other urban cities, such as San Francisco and San Jose to see how they calculate FAR.

*Item No. 27 – Update definition of family childcare homes.* Commissioner Lalwani noted that the changed terminology makes it a bit confusing as to whether the childcare is provided in a home setting or commercial facility. Staff agreed to report back to see if state law defines these facilities other than to state children maximums and to clarify that child care facility (formerly day care home) is still a facility in a home.

*Item No. 29 - Allowing 50% of required stalls to be compact.* Commissioner Williams felt 50% might be too much and felt stalls needed to be clarified as parking stalls. He also gave City historical perspective on disallowing compact stalls. Consensus was reached and staff will research other urban cities and insert the word "parking".

*Item No. 31 - Updated table of contents.* This was not available and staff noted it would be provided for the March 26, 2003 Planning Commission meeting.

**Motion** to concur with staff of proposed Ordinance No. 38.761 regarding miscellaneous zoning code text amendments not affecting Midtown.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

## **IX. ADJOURNMENT**

There being no further business, the meeting was adjourned at 10:05 p.m. to the next regular meeting of March 12, 2003

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

VERONICA RODRIGUEZ  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**February 5, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

Chair Hay called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Lalwani, Galang, Giordano, Hay, Nitafan, Sandhu and Williams  
Absent: None  
Staff: Heyden, Oliva and Rodriguez

**III.  
PUBLIC FORUM**

Chair Hay invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no public speakers.

**IV.  
APPROVAL OF MINUTES  
January 22, 2003**

Chair Hay called for approval of the minutes of the Planning Commission meeting of January 22, 2003.

There were no changes to the minutes.

**Motion** to approve the minutes of January 22, 2003 as submitted.

M/S: Lalwani/Giordano

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Hay) – Absent at the January 22, 2003 meeting.

**V.  
ANNOUNCEMENTS**

**Tambri Heyden, Planning Manager**, noted that the December 2002 monthly transportation status report, requested by Commissioner Williams at the last Planning Commission meeting, has been distributed at the beginning of tonight's meeting and will resume being distributed monthly. **Commissioner Williams** expressed his appreciation to staff and Joe Oliva for the comprehensive report.

**Commissioner Galang** gave thanks to Commissioner Nitafan and Commissioner Giordano and other donors for their donations to a Philippine hotline that provides assistance to abused children.

**Commissioner Nitafan** announced that the deadline for the 2003 Milpitas Citizen of the year, Firefighter of the year and Policeman of the year is February 14, 2003, and that the main event will be held on March 15, 2003 at the Milpitas Community Center.

**Commissioner Giordano** congratulated staff for organizing the Commissioner's Recognition Dinner and mentioned that it was well attended and the best one as of yet. Chair Hay echoed her comments.



Chair Hay encouraged the Commissioners to attend the 2003 Planner's Institute organized by the League of California Cities that will be held March 20 – 22, 2003 in San Diego, mentioning that this event provides great information on how to better serve the Community and to learn what's going on in the planning and legal process.

**VI.  
APPROVAL OF  
AGENDA**

Chair Hay called for approval of the agenda.

Ms. Heyden requested that Item No. 2 on the agenda be considered before Item No. 1.

**Motion** to approve the agenda with the indicated change above.

M/S: Lalwani/Sandhu

AYES: 7

NOES: 0

**VII.  
CONSENT CALENDAR  
No Items**

Chair Hay noted that there were no items on the consent calendar.

**VIII.  
NEW BUSINESS**

Chair Hay introduced Agenda Item No. 2 under New Business.

**1. GREAT MALL  
HOLIDAY PARKING  
REVIEW (P-AD2003-2)  
FOR USE PERMIT (NO.  
1166) AMENDMENT NO.  
P-UA2002-4:**

**Joe Oliva, Transportation Planner**, presented a 2002 holiday parking review update for the Great Mall Shopping Center that is required to be prepared as part of the approved use permit for a parking modification. Mr. Oliva noted that the dates surveyed were July 20 and 21, 2002, December 7 and 8, 2002 and December 14 and 15, 2002 from 12:00 p.m. to 6:00 p.m.

Chair Hay commented on the parking distribution after 4:00 p.m., and mentioned that there is always available parking on the other (east) side of the mall. He wanted to know if there is signage indicating available parking.

Ms. Heyden pointed out that a condition of approval imposed during review of the 2001 study last year required changeable message signs to be erected and that there are now several electronic parking signs that note parking is available in the parking deck that addresses this issue. Mr. Oliva added that these signs were in place during the holiday.

Commissioner Nitafan commented that he would still like to see better signage at the Great Mall because the signs are very hard to see.

Ms. Heyden responded that the Great Mall sign program which included directory signs that previously went to the Subcommittee included white lettering on an orange background that proved not to be visible. Commissioner Williams had suggested a black outline on the lettering. Ms. Heyden had knowledge of at least one sign being outlined and would report back on whether the rest had been completed. Chair Hay agreed that Commissioner Williams' suggestion had solved the problem.

**Vice Chair Lalwani** asked if parking demand was surveyed after 7:00 p.m. and Mr. Oliva responded that "no" because survey data showed that parking peaked at 4:00 p.m. and dropped rapidly after 6:00 p.m.

Vice Chair Lalwani mentioned that the parking lot near Dave and Buster's is very heavy after 6:00 p.m.

## **2. AMATEUR RADIO ANTENNAS DISCUSSION (P-AD2003-1):**

Chair Hay introduced Agenda Item No. 1 under New Business.

**Tambri Heyden, Planner Manager**, presented a discussion of the existing approval process and review criteria for amateur radio antennas previously requested by Commissioner Giordano. She gave a background of amateur radio antennas stating that in 1995, FCC required of regulations to accommodate antennas and that in Milpitas, residential antennas do not require Use Permits. Staff surveyed 7 cities and none require Use Permits for these kinds of antennas. Ms. Heyden mentioned that the Commission might want to regulate antennas as far as requiring them to be roof-mounted or freestanding, with freestanding ones being anchored to the side or rear of the dwelling, allowing height 25 feet above the zoning district height of 30 feet, and possibly limiting antennas of any type to two per residence.

Chair Hay commented that wireless masts have been used broadly to obtain frequencies in a neighborhood, but are a visual impact.

In response to Commissioner Galang's question of why the antennas cannot exceed 25 feet above the building, Ms. Heyden clarified that 25 feet falls right in the middle of the range of desired radio frequency. The radio frequency range to antenna height ranges from 17 feet to 70 feet.

Commissioner Galang asked if a satellite dish that is located in front of a home requires a Use Permit and Ms. Heyden responded, "No".

Commissioner Galang asked if antenna regulations apply to hillside homes and Ms. Heyden responded, "Yes".

Commissioner Williams gave a brief history of antennas mentioning that Milpitas is the only city that has a Telecommunications Commission and would like to see staff review the proposed regulations with them. He also suggested staff review then with CEPAC as well. In response to his request, Ms. Heyden said that staff has already been consulting with George Washburn, previous Chair from the Telecommunications Commission and would be receptive to review plans with the other organizations.

Commissioner Giordano asked if time permitted, would staff be able to include aesthetic information on antennas such as color and size and Ms. Heyden responded "Yes".

Commissioner Nitafan asked if the 25 feet above the zoning district height is strictly for residential and Ms. Heyden responded, "Yes" as this proposal is just for residential antennas.

In response to Commissioner Lalwani's question regarding the connection between 55 feet in antenna height and the corresponding radio frequency it provides, Ms. Heyden responded that the FCC allows reasonable restrictions for HAM antennas operators, and that staff felt the midpoint height was reasonable and accommodated most operators.

**Commissioner Sandhu** asked if staff can look into design considerations for satellite dishes as well with this proposal and Ms. Heyden replied, "Yes".

Chair Hay asked if there are currently guidelines in regards to visual impacts of antennas around homes and Ms. Heyden responded that all residential antennas are currently exempt from regulation except for a building permit.

Commissioner Williams acknowledged **Albert Alcorn, Chair of the Telecommunications Commission**, and asked him to describe how HAM operators operate.

After explanation by Mr. Alcorn, Commissioner Williams inquired about the 1995 changed FCC regulations and Mr. Alcorn responded that the Commission will be studying it in the next couple of months.

Although this item was not a public hearing, Chair Hay recognized **Ed Connor, resident at 1515 N. Milpitas Blvd.** Mr. Connor commented that amateur radios are important and used during war and they are able to talk to other operators all over the world.

**Lou Anne McKeefery, 2070 Stratford Drive**, mentioned how she has seen burnt orange antennas and would suggest a limit of one antenna per neighborhood. She felt that 30 feet should be the maximum height except if the antenna is telescoping.

Mr. Alcorn mentioned that frequency of antennas ranges up to 1.5 MHz and the distance varies. The height of the antennas depends on type and shape. It is very possible that the antennas would be of a different mass and limitations could be set.

Commissioner Nitafan responded that the two antenna limit would be premature and would recommend having the Telecommunications Commission review the proposal.

Chair Hay commented that aesthetic and safety issues of wireless antennas do not include just HAM antennas, but wireless antennas as well. He noted that he'd like CEPAC and the CAC to review the proposal as well. Chair Hay responded that this is a controversial subject and there are a lot of people involved. He mentioned that the City Attorney should get involved as well in case any legal issues come up.

Ms. Heyden reminded the Commission about the Phase II Zoning Ordinance Amendment project and that it requires two public hearings and involves the Planning Commission, City Council and the public. Thus, this would allow another opportunity for input to this issue as well.

Commissioner Giordano asked if there is enough time to gather the information the Commission is recommending for inclusion in Phase II of the Zoning Ordinance Amendment project when it comes to the Planning Commission. Ms. Heyden replied that it would be difficult given Phase II is planned to be discussed at the next meeting and not all the Committees suggested meet before then. She also noted that Phase III will not be coming forward until the next fiscal year so if this issue is removed from Phase II to avoid delaying Phase II there is not certainty when this issued would be completed. Ms. Heyden went on to suggest keeping this issue part of Phase II and staff will present what they have been able to address along with a status report at that time.

**Motion** to direct staff to proceed with preparing a HAM radio antenna ordinance, including it in the Phase II Zoning Amendments project, coordinating input from the Telecommunications Commission, CEPAC and the CAC at some point in the process and considering expanding the ordinance to all types of residential antennas, increasing the number of antennas allowed, incorporating greater aesthetic controls (color, landscaping and type of supports) and clarifying the height.

M/S: Williams/Nitafan

AYES: 7

NOES: 0

**IX.  
ADJOURNMENT**

There being no further business, the meeting was adjourned at 8:15 p.m. to the next regular meeting of February 26, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

VERONICA RODRIGUEZ  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**January 22, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

Vice Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams  
Absent: Hay  
Staff: Fujimoto, Heyden, Karlen, Pereira and Rodriguez

**III.  
PUBLIC FORUM**

Vice Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no public speakers.

**IV.  
APPROVAL OF MINUTES  
January 8, 2003**

Vice Chair Lalwani called for approval of the minutes of the Planning Commission meeting of January 8, 2003.

There were no changes to the minutes.

**Motion** to approve the minutes of January 8, 2003 as submitted.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

**V.  
ANNOUNCEMENTS**

**Tambri Heyden, Planning Manager**, noted that the City Council's decision regarding Home Depot's appeal of the Planning Commission's action was to give Home Depot 60 days to come back to Council after working with the task force to develop other screening solutions as they concurred with the Planning Commission that there is a need to screen the storage area.

Ms. Heyden also mentioned that a letter from the City Manager to the Mall was distributed to the Commissioners regarding the Great Mall's annual parking supply demand analysis which the Mall must complete for three consecutive years to ensure parking for the holiday season does not exceed the parking demand during the holidays. Ms. Heyden mentioned that the Mall parking supply demand study can be agendized for a future meeting. Staff did not do so yet because the analysis results met last year's conditions. **Commissioner Nitafan** requested that the study be agendized for the February 5, 2003 Planning Commission meeting and consensus was reached by the Commission.

Ms. Heyden also pointed out that a decision was made by City Council to post Planning Commission agendas and reports on the Internet, although she is not sure when this will begin.

**Commissioner Williams** commented that he has not seen quarterly traffic reports, which is a summary of conditions of such things as the status of the 237 /880 interchange Dixon Landing Road, which the Commission used to receive. Ms. Heyden noted that she will follow up with Transportation Planning to ensure this resumes.

In response to Commissioner Nitafan's clarifying question on what the City's Internet website address is, Commissioner Williams responded that it is [www.ci.milpitas.ca.gov](http://www.ci.milpitas.ca.gov).

**VI.  
APPROVAL OF  
AGENDA**

Vice Chair Lalwani called for approval of the agenda.

There were no changes to the agenda.

**Motion** to approve the agenda.

M/S: Sandhu/Nitafan

AYES: 6

NOES: 0

**VII.  
CONSENT CALENDAR  
Item Nos. 1, 2, 3, 4, 6, 7 and  
8.**

Vice Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Vice Chair Lalwani opened the public hearing on Consent Item Nos. 1, 2, 3, 4, 6, 7 and 8.

There were no speakers from the audience.

**Close Public Hearing  
Item Nos. 3, 4, 6 and 7**

**Motion** to close the public hearing on Consent Item Nos. 3, 4, 6 and 7. Consents Item Nos. 1, 2 and 8 to be continued to the February 26, 2003 Planning Commission meeting.

M/S: Giordano/Nitafan

AYES: 6

NOES: 0

**Motion** to approve the consent calendar on Consent Item Nos. 3, 4, 6 and 7.

**\*1 USE PERMIT NO. P-UP2002-28:** Request to install six telecommunications antennas on the building roof-top, and three ground-mounted equipment cabinets, at 1102 Pecten Court (APN 92-08-078). Applicant: AT&T Wireless. Project Planner: Annelise Judd, (408) 586-3273. (PJ #2302) *(Recommendation: Continue to February 26, 2003)*

**\*2 USE PERMIT NO. P-UP2002-8:** A request to increase seating from 37 to 49 for an existing restaurant (Tofu House), add on-site beer and wine sales, and approve a parking reduction in conjunction with the increase in seating at 231 West Calaveras Boulevard (APN:022-25-041). Applicant: Sung Ho Yoon. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #2245) *(Recommendation: Continue to February 26, 2003)*

- \*3 USE PERMIT AMENDMENT NO. P-UA2002-27 AND SIX MONTH REVIEW:** A six month review for Use Permit No. 1481, in regards to a previously approved parking reduction for Heald College and a Use Permit Amendment for an additional 15 space parking reduction (APN: 086-24-057 & 058), 341 Great Mall Drive. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #3098) *(Recommendation: Approval with Conditions and note receipt and file of the 6-month review)*
- \*4 USE PERMIT NO. P-UP2002-46:** A request for a 15 stall parking reduction for an adult day health care facility at 1533 California Circle (APN: 022-37-055). Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #3155) *(Recommendation: Approval with Conditions)*
- \*6 USE PERMIT NO. P-UP2002-44 AND "S" ZONE AMENDMENT NO. P-SA2002-105:** Request for an 18-hole, indoor miniature golf course and associated exterior modifications in the Great Mall entertainment area at 125 Great Mall Drive (APN 86-24-055). Applicant: Putting Edge. Project Planner: Staci Pereira, (408) 586-3278. (PJ #3154) *(Recommendation: Approval with Conditions)*
- \*7 USE PERMIT NO. P-UP2002-23:** Six-month review of a religious assembly use at 473-479 Los Coches (APN 86-28-033). Applicant: Syed M. Shah. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2292) *(Recommendation: Note, receipt, and file)*
- \*8 USE PERMIT NO. P-UA2002-21:** Request for a parking reduction to add additional seating and beer and wine sales at 89 S. Park Victoria Drive (APN 88-04-048). Applicant: Yuri Tofu House. Project Planner: Staci Pereira, 583-3278. (PJ #2306) *(Recommendation: Continue to February 26, 2003)*

M/S: Giordano/Nitafan

AYES: 6

NOES: 0

## VIII. PUBLIC HEARINGS

**1. USE PERMIT NO. P-UA2002-28:** *6 month temporary use permit for Manila Natori Restaurant located at 579 South Main Street.*

Vice Chair Lalwani moved to Public Hearings, Agenda Item No. 5.

**Troy Fujimoto, Assistant Planner,** presented a request for a 6-month temporary use permit for karaoke, dancing and live entertainment at Manila Natori Restaurant located at 579 South Main Street and recommended approval with conditions based on the findings and special conditions noted in the staff report. Mr. Fujimoto also pointed out the change to special condition no. 37 which reads as follows:

*Within thirty (30) days of January 22, 2003 (by February 22, 2003), the applicant shall obtain a Certificate of Occupancy from the Building Department.*

Commissioner Nitafan referenced Special condition No. 13 which reads as follows:

*The applicant shall complete construction of the garbage enclosure referenced in Condition No. 17, within 30 days of January 22, 2003, after which, all karaoke and entertainment uses shall be suspended until construction is completed.*

and suggested that 45 days is a more reasonable time frame for the applicant.

In response to Commissioner Galang's clarifying question regarding why the need for a 6-month temporary use permit, Mr. Fujimoto responded that the temporary use permit was to ensure that the applicant is progressing in a timely manner in meeting all of the special conditions.

Ms. Heyden also pointed out that the applicant was appealing for more time to complete the special conditions and that this use permit was an unusual circumstance. The temporary use permit was to allow the applicant to generate revenue to fund the improvements overtime, yet provided the City with a safeguard that the applicant would satisfy their conditions of approval.

Commissioner Nitafan mentioned how he visited the restaurant and met with the owner and that the owner has agreed to all the conditions staff has made.

Vice Chair Lalwani asked who is responsible for the garbage structure and Mr. Fujimoto responded that the applicant is. Ms. Heyden elaborated that because this is a single tenant site, the owner has placed the burden on the applicant. In multi-tenant situations, the financial burden is usually shared by all tenants, but it varies on a case by case basis.

Vice Chair Lalwani opened the public hearing.

There were no speakers from the audience.

**Motion** to close the public hearing.

M/S: Nitafan/Giordano

AYES: 6

NOES: 0

**Motion** to approve Use Permit No. P-UA2002-28 6-month temporary use permit with special conditions and recommendations noted in the staff report and to change special condition No. 13 which reads the following:

*The applicant shall complete construction of the garbage enclosure referenced in Condition No. 17, within 45 days of January 22, 2003, after which, all karaoke and entertainment uses shall be suspended until construction is completed.*

M/S: Nitafan/Giordano

AYES: 6

NOES: 0

Vice Chair Lalwani introduced Agenda Item No. 9 under New Business.

**2. REDEVELOPMENT  
AGENCY ANNUAL  
REPORT: Staff Contact:  
Emma Karlen**

**Emma Karlen, Finance Director,** presented a review of the Fiscal Year 2001-2002 Redevelopment Agency Audited Financial Statements and Annual Report and mentioned that no action was necessary by the Planning Commission.



**Commissioner Giordano** referenced page 3 of the report and questioned the \$5.8 million or 11.5% overall decrease.

Ms. Karlen responded that this data was in comparison to last year's data, which references the City's bonds to support construction.

Commissioner Giordano asked how the market trends impact the redevelopment agency and Ms. Karlen responded that the agency will receive less money this year compared to last year, which includes less revenue from property taxes.

Commissioner Giordano asked if the Milpitas Library was built by the Santa Clara County facility and Ms. Karlen responded that the library was built by the redevelopment agency which the City allocated hotel tax to build the library.

Commissioner Nitafo questioned the \$68 million in outstanding bonds and asked if the bonds are going to be fully paid off and Ms. Karlen responded that the City paid these in the year 2000.

Commissioner Nitafo questioned how much available bonds the City has and Ms. Karlen mentioned that the 2000 year bonds have been spent.

In response to Commissioner Nitafo's clarifying question, Ms. Karlen responded that the bonds will mature after the year 2008.

Commissioner Nitafo also asked how much surplus is available and Ms. Karlen responded that the availability depends on the outstanding balance the City pays off.

Commissioner Nitafo asked about undeveloped projects the City is funding and Ms. Karlen responded that that is not determined until there is new land development.

## **IX. ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:45 p.m. to the next regular meeting of February 5, 2003.

**Commissioner Sandhu** pointed out that February 5, 2003 is not the second Wednesday of the month and Ms. Heyden pointed out that the Commission approved the meeting dates back in December, and that the meeting was scheduled to February 5, 2003 due to Lincoln's birthday on February 12, 2003; a City holiday.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

VERONICA RODRIGUEZ  
Recording Secretary

**CITY OF MILPITAS  
APPROVED**

**PLANNING COMMISSION MINUTES**

**January 8, 2003**

**I.  
PLEDGE OF  
ALLEGIANCE**

Vice Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.  
ROLL CALL**

Present: Lalwani, Galang, Giordano, Nitafan, Sandhu and Williams

Absent: Hay

Staff: Heyden, King, Pereira, Racca-Johnson, Rodriguez

**III.  
PUBLIC FORUM**

Vice Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no public speakers.

**IV.  
APPROVAL OF  
MINUTES**

December 11, 2002

Vice Chair Lalwani called for approval of the minutes of the Planning Commission meeting of December 11, 2002.

There were no changes to the minutes.

**Motion** to approve the minutes of December 11, 2002 as submitted.

M/S: Sandhu/Giordano

AYES: 6

NOES: 0

**V.  
ANNOUNCEMENTS**

**Tambri Heyden, Planning Manager**, announced that the Commissioner's Recognition dinner will be held on January 30, 2003 at 7:00 p.m. at the Crowne Plaza Hotel, 777 Bellew Drive in Milpitas, and that the Subcommittee members rotated at the start of January with the active members including Vice Chair Lalwani and Commissioner Giordano and the alternate member being Commissioner Galang. Ms. Heyden noted that the next rotation will occur April 1, 2003, and called attention to the latest rotation schedule distributed at the start of the meeting. Ms. Heyden also noted that Kit Faubion, City Attorney would not be present at tonight's meeting given the agenda, and that a memorandum has been sent out regarding the City Attorney attending Commission meetings only when needed.

**Commissioner Williams** shared his participation experience along with Jennifer Columbine who also volunteered in the Family Giving Tree Volunteer program, which included gift-wrapping over one thousand gifts to children in need.

**VI.  
APPROVAL OF  
AGENDA**

Vice Chair Lalwani called for approval of the agenda.

**Commissioner Giordano** mentioned that a neighbor from Scott Creek Highlands has complained to her about a resident having an obtrusive antenna in their front yard, and requested that the Commission agendaize the City's antenna regulations at a future meeting.

Ms. Heyden noted that Phase II of the zoning amendments projects on which staff has begun work would be able to include the HAM radio antenna item, or staff could discuss at a future meeting.

After further discussion from the Commissioners, consensus was reached that HAM radio antennas be agendaized for a future meeting.

There were no changes to the agenda.

**Motion** to approve the agenda.

M/S: Giordano/Williams

AYES: 6

NOES: 0

**VII.  
CONSENT CALENDAR  
Item No. 1**

Vice Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Vice Chair Lalwani opened the public hearing on Consent Item No. 1.

There were no speakers from the audience.

**Close Public Hearing  
Item No. 1**

**Motion** to close the public hearing on Consent Item No. 1.

M/S: Sandhu/Galang

AYES: 6

NOES: 0

**Motion** to approve the consent calendar on Consent Item No. 1.

**\*1 USE PERMIT NO. P-UP2002-18:** A request to install two telecommunication antennas and associated equipment within an existing elevator penthouse at 1801 Barber Lane (APN 86-03-090). Applicant: Cingular Wireless. Project Planner: Staci Pereira, 586-3278. (PJ #2289). *(Recommendation: Approval with Conditions)*

M/S: Sandhu/Galang

AYES: 6

NOES: 0

**VIII.  
NEW BUSINESS**

Vice Chair Lalwani moved to New Business Agenda Item No. 2.

**2. DOG PARK UPDATE  
AT ED LEVIN PARK (P-  
EA2002-12):**

**Assistant City Manager Blair King** gave a presentation of the proposed design plans for a City of Milpitas dog park to be located within Ed R. Levin County Park near Sandy Wool Lake and noted that the City of Milpitas is the lead agency and Santa Clara County is the

responsible agency. Mr. King mentioned that this item will be brought to the City Council on January 21, 2003 and will include the lease agreement and require Council to approve the Negative Declaration. He noted there is no action required from the Planning Commission.

In response to Commissioner Nitafan's clarifying question regarding the basic terms of the lease between the City and the County, Mr. King replied that there is no cost to the City, and the lease is for 15 years, with renewal for 10 years, and that the City will be held responsible for operation and construction.

Commissioner Nitafan asked if the City has the option to buy the dog park after 25 years and Mr. King stated "No", and mentioned that what would happen would be that the County would pick up the operation and maintenance costs, or the City would revert the land to the way it was before the dog park.

Commissioner Williams questioned the 5-foot fence and asked if the City had a chance to assess other dog parks in neighboring communities.

Mr. King noted that the Mountain View dog park at Shoreline has a 4-foot high fence and that the Union City dog park has a 5-foot high fence. His observations were that dogs were interested in meeting other dogs, and not the interaction on the other side of the fence.

In response to **Commissioner Galang's** question regarding hours of operation, Mr. King responded that the hours will be consistent with Ed Levin park's hours, which is sunrise to sunset, except when notified by the County of special events, which per the lease should not occur more than 12 times a year.

Commissioner Galang raised concerns regarding children being safe with only a 5-foot fence and Mr. King replied that the height is adequate for safety purposes.

**Commissioner Sandhu** asked what the fee will be to access the dog park and Mr. King noted that the fee will be the same as Ed Levin park's fee, and that customers could buy an annual pass like the one used at Hellyer Dog Park.

Commissioner Galang asked who would be maintaining the dog park and Mr. King responded that the City would be.

Vice Chair Lalwani introduced Agenda Item No. 3 under New Business.

### **3. PLANNING COMMISSION REPRESENTATION TO CITIZENS ADVISORY COMMISSION:**

Commissioner Giordano who had asked that this item be agendaized, voiced that the intent of having a liaison from the Planning Commission (PC) to the Community Advisory Commission (CAC) meeting would be "synergy" at the meeting, and mentioned that the Vice Chair could coordinate an attendance schedule for the PC members.

Commissioner Nitafan recalled that the CAC already

receives the PC's agendas and minutes and doesn't see a reason to have a liaison, but would rather have a volunteer process so that no pressure is added to PC members' already busy schedule. Commissioner Galang agreed with this.

Commissioner Sandhu recalled how he attended CAC meetings in the past and doesn't really see the benefit, and suggested that a CAC member attend the PC meetings and provide a summary. Commissioner Nitafan agreed.

After further discussion, Vice Chair Lalwani noted that the PC cannot direct the CAC to come to the PC meetings, and agreed that PC members should receive copies of the CAC minutes and agenda. Ms. Heyden ensured that this would be arranged.

Vice Chair Lalwani also agreed that attending the CAC is too much of a burden on one person and would personally not mind a rotation schedule among PC members.

A **motion** to designate a Planning Commission representative(s) to attend Citizens Advisory Commission meetings was made by Commissioner Giordano, but there was no second to the motion, so the motion failed.

Commissioner Williams commented that Commissioner Giordano's intentions of having a representative were good, but felt that the PC was already very busy with other work schedules, and the other Commissioners agreed.

## **IX. ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:45 p.m. to the next regular meeting of January 22, 2003.

Respectfully Submitted,

Tambri Heyden  
Planning Commission  
Secretary

VERONICA RODRIGUEZ  
Recording Secretary